

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1291

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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THE UNITED STATES OF AMERICA

Plaintiff-Respondent

-VS-

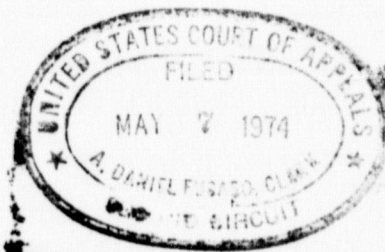
MICHAEL LEE JACKSON

Defendant-Appellant

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APPENDIX

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1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NEW YORK

3 \* \* \* \* \*

4 THE UNITED STATES

5 -v-

CRIMINAL DOCKET  
NO. 1973-251

6 MICHAEL LEE JACKSON,

7 Defendant.

8 \* \* \* \* \*

9  
10 Proceedings of Hearing on Motion to  
11 Suppress, held before the Hon. John T. Curtin, United States  
12 District Judge, in Part II, United States Court House,  
13 Buffalo, New York, on July 24, 1973.

14  
15 APPEARANCES:

JOHN T. ELFVIN, United States Attorney,  
by EDWARD J. WAGNER, Assistant United  
States Attorney.

16  
17 PHILIP ABRAMOWITZ, Esq., Attorney for  
18 the Defendant.  
19  
20  
21  
22  
23  
24  
25



INDEX OF WITNESSESGOVERNMENT WITNESS:DR.      CR.      RDR.      RCR.

Harry Michael Roth

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46

James A. Taylor

34      39

Roger Lee Richardson

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1 PROCEEDINGS: July 24, 1973, 10:00 a.m.

2 APPEARANCES: As before noted.

3 (Defendant present.)

4  
5 THE COURT:

This is in the case of United States  
versus Michael Lee Jackson, Criminal  
1973-251. As I understand, Mr. Wagner and  
Mr. Abramowitz, you are ready to proceed  
this morning.

6  
7  
8  
9  
10 MR. WAGNER:

That's right, your Honor.

11 MR. ABRAMOWITZ:

Yes, your Honor.

12 THE COURT:

Call your first witness.

13 MR. WAGNER:

Mr. Roth.

14  
15  
16 H A R R Y M I C H A E L R O T H (27 Dellinger Avenue,  
17 Batavia, New York), a Witness called by and in behalf of the  
18 Government, having been first duly sworn, was examined and  
19 testified as follows:

20  
21 DIRECT EXAMINATION BY MR. WAGNER:

22 Q. Mr. Roth, where are you employed?

23 A. Batavia Police Department.

24 MR. ABRAMOWITZ:

Can you speak up?

25 THE WITNESS:

Batavia Police Department.



1 THE COURT: You will have to speak up, Mr. Roth,  
2 so will you sit up a little closer to the  
3 microphone, please.

4 BY MR. WAGNER:

5 Q. And how long have you been working there?

6 A. Approximately six months.

7 Q. Can you tell us the general nature of your duties?

8 MR. ABRAMOWITZ: I am sorry. Is that six weeks or  
9 six months?

10 THE WITNESS: Six months.

11 BY MR. WAGNER:

12 Q. Can you tell us the general nature of your duties, sir?

13 A. Routine patrol of the city in vehicles, B Patrol.

14 THE COURT: You will just have to speak up.

15 Imagine there was somebody back there at  
16 the far wall. Mr. Cioffe, maybe you can  
17 turn the machine off.

18 BY MR. WAGNER:

19 Q. Could you tell us again, please, the general nature of  
20 your duties with the Batavia Police Department?

21 A. Routine patrol of Batavia, the city in vehicles, police  
22 vehicles.

23 Q. Were you employed in that capacity on June 14, 1973?

24 A. Yes, sir, I was.

25 Q. And did you have occasion on June 14, 1973 to investigate

1 a 1968 Plymouth Fury?

2 A. Yes, sir.

3 Q. And could you tell us how you first became involved with  
4 that investigation, please?

5 A. Well, I was on routine patrol that night and there was  
6 an alarm that came into the station. We have a system  
7 of alarms to the buildings in the city, and an alarm,  
8 two alarms came in, one for the United States Army  
9 Reserve and one for the Selective Service, in Batavia  
10 at the Mancuso Building. This is in the immediate area  
11 that I was patrolling that night, so I proceeded down  
12 an alleyway to the rear of 216 Main Street, or there is  
13 an alleyway through which you can obtain to go to the  
14 Selective Service Building on Main Street, and on the  
15 way through this alley I noticed a vehicle parked there  
16 with out-of-state license plates from Ohio. The muffler  
17 was very loud and it was just standing there parked  
18 with a man individual, a man sitting in the vehicle, so  
19 I felt that it was very suspicious. This vehicle was  
20 the only one in the alleyway and the only person around  
21 in this vicinity, and the fact that there was an alarm  
22 coming in through the Selective Service Board, and I  
23 stopped and asked the individual what his name was and  
24 if he had a license and registration and insurance card  
25 because of the fact that the vehicle was running and



1 he stated no, that he didn't, and I asked what his name  
2 was and he informed me that his name was Leon Smith, and  
3 I then proceeded to ask him if he didn't have a license,  
4 why was the engine running in the vehicle and he informed  
5 me that his friend Al Smith had started the vehicle and  
6 had left to go back to the Mancuso Building, which is  
7 the same building where the Selective Service is, so  
8 at this time I felt that, - I asked him if he would step  
9 out of the car, which he did, and at this time the  
10 vehicle had stopped running and I asked where the keys  
11 were and he said that his friend Al Smith had them, had  
12 the keys to the car and he was over to the Selective  
13 Service Building, so then another patrolman had been  
14 dispatched to go to the Selective Service Building to  
15 check out to see if there was a possible burglary in  
16 process at the Selective Service, so I felt at this time  
17 that I should go to this other patrolman's aid because  
18 of the fact that his radio was in poor condition. His  
19 batteries were running down and it was almost impossible  
20 for him to hear transmissions except from the station  
21 because it is a more powerful, - you can receive a little  
22 bit more from the station than you can from another  
23 transmitter on patrol, so then I felt that I should go  
24 over there and investigate to see if this other suspect  
25 that this Leon Smith informed me of was over there to

1 the Selective Service Building, which he stated he was  
2 over to the Mancuso Building, so then I went over to the  
3 Mancuso Building and found that Patrolman Richardson  
4 was coming out of the building and had found the building  
5 was secure, and at this time I informed Officer  
6 Richardson of the fact that the vehicle that I had  
7 noticed and talked with this individual, and we both  
8 proceeded back to where the vehicle was and at this time  
9 there was this subject Leon Smith had left the area and  
10 was not around, so we then ran a NCIC check on it,  
11 National Crime Check for a stolen vehicle and other  
12 offenses, and found that, you know, we ran the check and  
13 Officer Richardson then proceeded back, was on his way  
14 back to the station to obtain another radio because his  
15 wasn't working and I proceeded to check around the  
16 area, and while I was checking the area of the vicinity  
17 of the vehicle within the immediate block or two, I was  
18 informed that the vehicle was stolen from Akron, Ohio,  
19 so at this time I immediately proceeded back to the  
20 vehicle, to the point at the rear of 216 East Main, and  
21 at this time I confronted the subject Leon Smith again  
22 who was proceeding towards the vehicle, approximately,  
23 I would say approximately twelve feet away from the  
24 vehicle at the time I had responded him and I informed  
25 the station headquarters that I was, - we use the term



1       ten twelve, which means that we are in presence of  
2       someone that we don't want them to hear our transmissions,  
3       so at this time I asked for, - told the station that I  
4       was ten twelve and asked for a backup unit to help me  
5       out with this individual and I stopped and conversed  
6       with Leon Smith again and then the backup unit arrived  
7       and at this time Officer Taylor and Officer Richardson  
8       were both in the vehicle and we just, - Officer Taylor  
9       asked him if he were, - he had, - if he was the owner  
10      of the vehicle or if he had stolen the vehicle or owned  
11      the vehicle and he said that he had stolen it and at  
12      this time Officer Taylor placed him under arrest, under  
13      arrest, and we transported him to the Batavia Police  
14      Department.

15   Q.   Mr. Roth, the gentleman that identified himself to you  
16       as Mr. Smith, do you see him in the courtroom today?

17   A.   Yes, I do.

18   Q.   Could you identify him for us?

19   A.   He is seated over there. The man with the blue shirt  
20       on.

21   Q.   Let the record reflect that Mr. Roth has identified  
22       Mr. Jackson. I have got a couple of questions for you  
23       to clarify what you said earlier. You were patrolling  
24       how, on foot?

25   A.   I was patrolling in, it is more or less a meter maid

1 vehicle. It is a three-wheeled vehicle. We use it on, -  
2 we have a section of town where we use this vehicle at  
3 night. In the daytime this vehicle is used as a meter  
4 maid collection vehicle, but at night during my patrol,  
5 during my platoon's period of time we use it as just  
6 another car, so you can get in and out of alleys, an  
7 easy access.

8 Q. You testified the first time you met Mr. Jackson, who  
9 of course identified himself to you as Mr. Smith, you  
10 were on your way to assist a call at a possible break-in  
11 at the Selective Service headquarters, is that correct?

12 A. Yes, sir, I was.

13 Q. And you left Mr. Jackson at that time and proceeded on,  
14 is that what you said?

15 A. Yes, sir, I did.

16 Q. And then after that you returned a second time to the  
17 automobile, is that right?

18 A. Yes, sir.

19 Q. When you returned a second time, did you say anything to  
20 Mr. Jackson?

21 A. When I returned the second time with Officer Richardson  
22 there was no one in the area. The third time I returned.

23 Q. Can you tell us what you said the third time you  
24 returned?

25 A. Well, I didn't want to make him aware of the fact that



1 we were suspicious of him because I was alone at the  
2 time by myself and I wanted a backup unit to be in, you  
3 know, the immediate area when I, - when we made any  
4 attempts to confront the fellow if he had stolen the  
5 vehicle or not.

6 Q. All right, and what did you say to Mr. Jackson?

7 A. Well, I asked him if he had found his friend Al Smith,  
8 and he said "No", and just, - I really don't know  
9 exactly what I said to him, just conversed with him,  
10 and at the time that the other patrol unit had arrived,  
11 then Officer Taylor started talking to him.

12 Q. Approximately how long was it that you conversed with  
13 Mr. Jackson before the backup unit arrived?

14 A. Not more than one or two minutes at the most.

15 MR. WAGNER: I guess I have no further questions.

16  
17 CROSS EXAMINATION BY MR. ABRAMOWITZ:

18 Q. Officer Smith, do I take it that at no time the evening  
19 of June 14, 1973 did you ever give Michael Lee Jackson  
20 his Miranda warnings?

21 A. My name is Officer Roth, and no, sir, I didn't.

22 Q. I am sorry, Officer Roth. Did you ever on the evening  
23 of June 14, 1973 give Michael Lee Jackson his Miranda  
24 warnings.

25 A. No, sir, I didn't. I was --

- 1 Q. Okay. Did any other officer in your presence give him  
2 his Miranda warnings?
- 3 A. Yes, sir.
- 4 Q. Prior to the time that he was arrested?
- 5 A. No, sir.
- 6 Q. Prior to the time that he gave the statement you testified  
7 to that he said he had stolen the car, no one, no  
8 Batavia police officer had ever given him his Miranda  
9 warnings, is that correct?
- 10 A. No, sir, no one did.
- 11 Q. It is correct that no one gave him his Miranda warnings,  
12 right?
- 13 A. Prior to the time that --
- 14 Q. Prior to the time --
- 15 A. Will you state the question over again so I have it  
16 clear?
- 17 Q. Prior to the time that Mr. Jackson was arrested, did  
18 any Batavia Police officer give Mr. Jackson his Miranda  
19 warnings?
- 20 A. No, sir.
- 21 Q. Now, what was the first time that you saw Mr. Jackson?
- 22 A. When I was en route to the Selective Service Building  
23 to check on Officer Richardson.
- 24 Q. And about what time was that?
- 25 A. I would say to be exact I really, around approximately



1 11:00 to 11:30, in that area. I couldn't give you exact  
2 times.

3 Q. 11:00 to 11:30 in the evening, is that correct?

4 A. Yes, sir, around that area.

5 Q. And you were suspicious of the car at that time, is that  
6 correct?

7 A. Yes, sir.

8 Q. And you were suspicious of the car because it was in an  
9 alley, is that correct, among other reasons, is that  
10 right?

11 A. It was in an alley adjacent to a building that had, -  
12 that was possibly being burglarized.

13 Q. And also the muffler was loud, there was one person in  
14 it and it was at night, is that correct?

15 A. Yes, sir.

16 Q. And that is unusual for a place like Batavia, New York,  
17 is that correct?

18 A. It is unusual to have --

19 THE COURT: Mr. Abramowitz, can you wait a minute,  
20 please. I am sorry, go ahead, Mr.  
21 Abramowitz.

22 BY MR. ABRAMOWITZ:

23 Q. Officer Roth, Mr. Jackson was in an automobile in a  
24 vacant alley in Batavia, New York and his muffler, -  
25 and the car was on and the muffler was making a lot of

1 noise, is that correct?

2 A. Yes, sir.

3 Q. Now, that is unusual for a place like Batavia, New York,  
4 at 11:30 at night, is that correct?

5 A. Well --

6 Q. Was it usual or unusual? Can you answer "Yes" or "No"?

7 A. Well, I can't answer "Yes" or "No" to you because there  
8 is other parts of it that --

9 Q. Just that fact alone, would that have given you suspicion  
10 of anything?

11 A. No.

12 Q. You went over to him and you asked him for some  
13 identification, is that correct?

14 A. Yes, sir.

15 Q. Okay, and was he able to give you any identification  
16 whatsoever?

17 A. No, sir.

18 Q. And what did he say when you asked for identification?

19 A. He said he didn't have any.

20 Q. Did he turn off the car?

21 A. When I asked him to step out of the vehicle the vehicle  
22 had stopped running.

23 Q. Okay, and did he use a key to turn off the car?

24 A. No, sir.

25 Q. What did he use to turn off the car?



1 A. A screwdriver.

2 Q. Did that make you more suspicious as to whether or not  
3 the defendant might have been up to some illegal activity?

4 A. Well, I, - there was a screwdriver setting in the  
5 vehicle and I don't really know if he turned it off with  
6 the screwdriver because I didn't see him turn it off  
7 with the screwdriver. I just assumed that this is what  
8 he had turned it off with because Officer Richardson  
9 started it up with it, a screwdriver.

10 THE COURT: Keeping that assumption in mind at  
11 that time you made the assumption that he  
12 must have turned it off with the screw-  
13 driver?

14 THE WITNESS: Yes, sir.

15 THE COURT: Did that make you suspicious that  
16 he was engaged in some illegal activity?

17 THE WITNESS: Yes, sir.

18 BY MR. ABRAMOWITZ:

19 Q. And, Officer Roth, do you recall speaking to Special  
20 Agent James Baird of the Federal Bureau of Investigation  
21 on June 22, 1973?

22 A. Yes, sir.

23 Q. And at that time do you recall telling him that you  
24 observed Michael Lee Jackson taking a screwdriver and  
25 use it to turn off the ignition of the car?

1 A. I assumed that he used the screwdriver, yes. I don't  
2 really --

3 MR. ABRAMOWITZ: Would you mark this, please.

4 (Court Exhibit Number 1 marked.)

5 BY MR. ABRAMOWITZ:

6 Q. Officer Roth, I show you what has been marked as Court  
7 Exhibit 1 which is an FBI report of Special Agent  
8 James Baird and ask you to read this sentence to yourself  
9 and ask you if it refreshes your recollection as to  
10 whether or not you in fact did specifically observe the  
11 defendant use a screwdriver to turn off the ignition  
12 of the automobile.

13 A. Well, at this time, like I say --

14 Q. My question is does it refresh your recollection as  
15 to whether or not you did observe him turn off the  
16 ignition to the automobile with a screwdriver?

17 A. No, sir.

18 Q. Okay. You did see a screwdriver there and your testimony  
19 now is that you certainly at least assumed that he  
20 had turned it off with a screwdriver, correct?

21 A. Yes.

22 Q. Okay, and then you asked him for some identification.  
23 Did he give you any identification whatsoever?

24 A. No, sir, except his name was Leon Smith.

25 Q. Did he explain to you why he didn't have any identifica-



1           tion?

2   A.     No, sir.

3   Q.     And he told you that his friend was Al Smith, is that  
4           correct?

5   A.     Yes, sir.

6   Q.     Okay. Did that make you more suspicious than once he  
7           found out, - once you found out that he used a screw-  
8           driver to turn off the ignition and he told you that his  
9           name was Leon Smith but he had no identification  
10          whatsoever and he said that he had a friend named Al  
11          Smith who was going to come back to the car, did these  
12          things continue to make you more suspicious as to whether  
13          or not the defendant was up to some illegal activity?

14   A.     He didn't state that Al Smith was going to come back to  
15          his car. He stated Al Smith was at the Mancuso Theater  
16          Building.

17   Q.     When he told you his friend Al Smith was at the Mancuso  
18          Theater Building and he told you that his name was  
19          Leon Smith and that he had no identification to prove  
20          it and he was in an automobile in an alley in Batavia,  
21          New York at 11:30 p.m. and he used a screwdriver to turn  
22          off the ignition of his automobile, did you believe that  
23          this, that the defendant might have been up to some  
24          illegal activity?

25   A.     Could you shorten that up a little so I can understand

1 it, or else clear it up?

2 THE COURT: Cf course, it did, didn't it, Officer?

3 THE WITNESS: Well, it made me suspicious.

4 THE COURT: Sure.

5 THE WITNESS: All right.

6 THE COURT: Here you have just the idea of Smith  
7 which is sort of a joke that anybody wants  
8 to hide his identity, he says "My name is  
9 Smith".

10 THE WITNESS: Right, Smith.

11 THE COURT: Here you have a fellow who says his  
12 name is Smith and he says not his brother  
13 or his father, but a friend, his friend  
14 is also named Smith.

15 THE WITNESS: Al Smith, right.

16 THE COURT: I suppose it happens, and I am sure  
17 it happens often, because there are so  
18 many Smiths, but here you have the  
19 screwdriver. I am sure that it made you  
20 suspicious, didn't it?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right.

23 BY MR. ABRAMOWITZ:

24 Q. But you had another call to check on, is that correct?

25 A. I was --



1 Q. There came a time when you left the defendant?

2 A. I left the defendant because of the fact he said that  
3 his friend was at the same building that my friend the  
4 patrolman was at and I felt that maybe there was something  
5 going on because of the fact there was an alarm come in,  
6 that his friend Al Smith was involved with this. I just  
7 wanted to check and see if the other officer was okay  
8 and I felt it was more important for me to check on the  
9 other officer than to carry on with the investigation.

10 Q. Fine. And then there came a time when you wrote down  
11 the license plate number of the vehicle in which Mr.  
12 Jackson was in, isn't that correct?

13 A. Yes, sir.

14 Q. Okay, and there came a time when you put that through  
15 the NCIC computer, is that correct?

16 A. Yes, sir.

17 Q. And once you put it through the NCIC computer you found  
18 out that the car had been stolen, is that correct?

19 A. Yes, sir.

20 Q. And had been stolen in Akron, Ohio, is that correct?

21 A. Yes, sir.

22 Q. So you came back to speak with the defendant, is that  
23 correct? You came back to the automobile where the  
24 defendant was?

25 A. Yes, sir.

1 Q. And there came a time when he returned to the automobile,  
2 is that correct?

3 A. When I returned to the vehicle there was no one there  
4 and then I proceeded away from the vehicle again.

5 Q. Okay.

6 A. On my third arrival the individual was there.

7 Q. Okay, and at that time did you ask him again for some  
8 identification?

9 A. No, sir, I didn't.

10 MR. ABRAMOWITZ: Okay. Will you mark this, please.

11 (Court Exhibit Number 2 marked.)

12 BY MR. ABRAMOWITZ:

13 Q. Officer, I am showing you what has been marked for  
14 identification as Court Exhibit 2 which is a letter  
15 dated June 10, 1973, written to me from the Assistant  
16 United States Attorney in charge of this letter, in  
17 charge of this case, Edward Wagner, in which he quotes  
18 from a report which you made and he says, he says in  
19 the letter, "Roth found the subject walking back to  
20 the vehicle. Patrolman Roth further reports" quotes,  
21 "Writer at this time asked the subject for some  
22 identification". Is that a correct and accurate  
23 quotation from your report?

24 A. Whereabouts is that?

25 Q. Right here.



1 A. At the third, - this is, - the first time I met him I  
2 asked him for some identification. The third time I  
3 did not ask him for some identification until he was at  
4 the police station.

5 Q. Okay. Well, the third time that you went back there, -  
6 you were testifying that the only time you asked him  
7 for identification was the first time?

8 A. The first time.

9 Q. Okay. Now, let me just read this letter out loud.  
10 "The vehicle was found parked and empty. The officers  
11 ran a check on the car and discovered that it had been  
12 stolen from Akron, Ohio. They then checked the area  
13 for its occupant and Roth found the subject walking  
14 back towards the vehicle. Patrolman Roth further  
15 reports" quote, "Writer at this time asked the subject  
16 for some identification", unquote. That was the last  
17 time you spoke with him, you asked him again for  
18 identification, correct?

19 A. Well, it has been --

20 THE COURT: There are two things. Mr. Abramowitz,  
21 are you asking him "Is that what you said  
22 in your report"?

23 BY MR. ABRAMOWITZ:

24 Q. First question, is that what you said in your report,  
25 is that an accurate statement of what you said in your

1 report?

2 A. I don't really remember if that is what I stated that  
3 the first time I made a report.

4 THE COURT: Do you have the report here, Mr.  
5 Wagner?

6 MR. ABRAMOWITZ: Do you have the report here?

7 MR. WAGNER: Yes, we do.

8 THE COURT: That would be it. There is always  
9 a chance --

10 THE WITNESS: I really don't feel that I should  
11 have, - I really don't think --

12 THE COURT: We have the report here. Let us look  
13 at the report.

14 MR. ABRAMOWITZ: Why don't we just mark it.

15 THE COURT: Right.

16 (Court Exhibit Number 3 marked.)

17 BY MR. ABRAMOWITZ:

18 Q. Showing you a report, Officer, now which has been marked  
19 Court Exhibit Number 3, you first tell me is this your  
20 report? Is this a carbon copy or a Xerox copy of the  
21 report you made?

22 A. It appears to be.

23 Q. Okay. That is Court Exhibit 3.

24 THE COURT: When is that report dated, Mr.  
25 Abramowitz?



1 BY MR. ABRAMOWITZ:

2 Q. And this is a report which you made on June 25, 1973,  
3 is that correct?

4 A. Yes.

5 Q. Okay. Referring your attention to Paragraph 5, it says,  
6 does it not, "Writer at this time asked the subject for  
7 some identification"?

8 A. Yes, sir, it does.

9 Q. Okay. Now, would you say that your recollection as to  
10 what occurred on June 14, 1973 was better on June 25,  
11 1973 when you made out this report or would you say it  
12 is better today?

13 A. I would say it is better then than today because of the  
14 fact of the period of time.

15 Q. Okay, so when you went and spoke to him again, then you  
16 asked him again for some identification, correct?

17 A. Well, the third time I really recall asking. When I  
18 returned the third time I returned I asked him if he had  
19 found his friend Al Smith. That is really the only thing  
20 I can recall.

21 Q. Okay.

22 A. I know I conversed with him to some extent but I really  
23 don't know what questions I asked him.

24 Q. Okay. You can't remember any of the questions you asked  
25 him?

1 A. The one question that I can recall that I asked him if  
2 he had found his friend Al Smith.

3 Q. Okay, and what did he respond to that?

4 A. He said "No".

5 Q. Okay. Did that make you suspicious at all?

6 A. Well, yes, sir, but --

7 Q. Okay, and then after you conversed with him you called, -  
8 when you conversed with him the, - this is the third time  
9 you are back at the car, but the second time you spoke  
10 with him you knew that the car had been stolen, right?

11 A. Yes, sir.

12 Q. Okay, and you knew at that time that the defendant was  
13 a, - would be a suspect and a possible defendant in at  
14 least a state charge of possessing stolen property, isn't  
15 that correct?

16 MR. WAGNER: Your Honor, I will object to that.  
17 I don't think he is a lawyer and I don't  
18 think his job is to --

19 THE COURT: Overruled.

20 THE WITNESS: Well, I knew that he was to some  
21 extent involved in something.

22 BY MR. ABRAMOWITZ:

23 Q. All right, and that something would have been the possible  
24 theft of an automobile or at least of possible possession  
25 of an automobile which had been stolen in Akron, Ohio,



1 is that correct?

2 A. Yes, sir. Well, very possible. He was in it.

3 Q. Okay, sure, he was in it and he used a screwdriver to  
4 turn the car off, right, and all the other things you  
5 talked about?

6 A. Yes.

7 Q. And that made you very suspicious?

8 A. Yes.

9 Q. And he was a suspect in the possession of a stolen  
10 automobile, is that correct?

11 A. Yes, sir.

12 Q. Okay, and then you called for some assistance, correct?

13 A. Yes, sir.

14 Q. And you called for assistance because it certainly had  
15 gotten beyond a routine stage of investigation, is  
16 that correct?

17 A. Yes, sir.

18 Q. You in your own mind had at least accused the defendant --

19 MR. WAGNER: Your Honor, I will object to this.

20 THE COURT: Overruled.

21 BY MR. ABRAMOWITZ:

22 Q. In your own mind at least you were accusing the defendant  
23 of possessing a stolen automobile, correct?

24 A. No, sir. I was more or less accusing him of being in  
25 the immediate area of a stolen automobile. I don't know

1 if he stole it or not. I --

2 Q. Right, but at least you suspected him of doing that, is  
3 that correct?

4 A. It would be probable that it could be that.

5 Q. Sure, and that's why you called for two more police  
6 officers for assistance, correct?

7 A. Well, I called for the other, for more assistance because  
8 of the fact that I thought there was another person in  
9 the area too and the fact that I had this individual in --

10 Q. Okay, but you also called because you felt that you  
11 might have to arrest the defendant because he was possibly  
12 committing a crime; that is possessing a stolen automo-  
13 bile; he was in the automobile, right?

14 A. Yes, sir.

15 Q. Okay. Now, at that time you didn't give him his Miranda  
16 warnings, is that correct?

17 A. No, sir, I didn't.

18 Q. You continued to question him and you continued to  
19 converse with him, isn't that correct?

20 A. No, sir, I didn't.

21 Q. Well, you told us that the second time you went back  
22 there --

23 A. The third --

24 THE COURT: You keep saying "the third time".

25 The third time you went back, but it is



1 the second time you had conversation with  
2 him?

3 THE WITNESS: Right.

4 THE COURT: Let us all use the same verbiage.  
5 I don't care whether you want to say the  
6 second time you talked to him.

7 BY MR. ABRAMOWITZ:

8 Q. Fine, all right. The second time you talked to him you  
9 knew that the automobile was stolen, correct? You  
10 can't just shake your head.

11 A. Yes, sir.

12 Q. You knew that he had turned off the automobile with a  
13 screwdriver, right?

14 A. I assumed that he did.

15 Q. Okay. Now, you knew that he had no identification,  
16 correct?

17 A. Yes.

18 Q. You knew that he said his name was Smith, right?

19 A. Yes, sir.

20 Q. You knew that he had a friend named, he claimed to have  
21 a friend named Al Smith, correct?

22 A. Yes.

23 Q. And you knew that the automobile was stolen, correct?

24 A. Yes, sir.

25 Q. And you knew that he had been in the automobile, correct?

1 A. Yes.

2 Q. In an alley in Batavia, New York at about 11:30 at night,  
3 correct?

4 A. Yes, sir.

5 Q. Okay. You came back and prior to the time that you came  
6 back this second time to speak with him, you knew all  
7 of those facts that we have just related, correct?

8 A. Yes, sir.

9 Q. Okay, and then you continued to have some more conversa-  
10 tion with him, correct?

11 A. Yes.

12 Q. And you asked him some questions but you can't remember  
13 what those questions were?

14 A. No, there were no questions.

15 Q. But didn't you earlier say you had asked him some questions  
16 but you couldn't remember what the questions were?

17 A. Well, the second time I conversed with him.

18 Q. Yes, when you conversed with him --

19 A. I just more or less --

20 Q. You didn't say one thing and he said something else and  
21 then he said something else and you said something else,  
22 you conversed by asking him questions, right?

23 A. I didn't ask him, - I asked him some questions, yes.

24 Q. Okay, you did ask him some questions.

25 A. Yes.



1 Q. Okay, and prior to the time that you were asking questions  
2 you didn't give him his Miranda warnings, correct?

3 A. Well --

4 Q. You never gave him his Miranda warnings?

5 A. No.

6 Q. Okay, and you were, you continued to question him and  
7 then you called for assistance, is that correct?

8 A. Yes, sir, but I --

9 Q. Okay.

10 THE COURT: Listen to the question, Mr. Roth.

11 THE WITNESS: Yes.

12 THE COURT: You did call for assistance, there  
13 is no question about that?

14 THE WITNESS: Yes, but I asked --

15 THE COURT: Surely.

16 THE WITNESS: I asked him questions that weren't  
17 pertaining to the vehicle.

18 THE COURT: We do not know what you asked him  
19 and --

20 THE WITNESS: Yes.

21 THE COURT: That isn't the question that Mr.  
22 Abramowitz asked you.

23 THE WITNESS: Right.

24 THE COURT: Just answer the question that he  
25 asks you.

1 BY MR. ABRAMOWITZ:

2 Q. Okay. You continued, you asked him questions and you  
3 don't recall what the questions were, correct?

4 A. Correct.

5 Q. Okay. You had also asked him for identification, correct?

6 A. The second time.

7 Q. Yes, correct?

8 A. I --

9 Q. Okay, you don't recall that?

10 A. Right.

11 Q. Okay, and then you called for assistance and the police  
12 officers and two other police officers arrived?

13 A. Yes.

14 Q. Is that correct?

15 A. Yes.

16 Q. And one of them got out of the car and asked him "Did  
17 you steal this car", correct, or did you ask that question?

18 A. No, another individual asked him.

19 Q. Okay.

20 A. Asked him if he owned the vehicle.

21 THE COURT: Do you remember now, Mr. Roth --

22 THE WITNESS: I really don't.

23 THE COURT: You first testified you first said  
24 that the officer said "Did you steal the  
25 car" and then he said "No, do you own the



1 car". What is your best recollection of  
2 what the officer said to the defendant at  
3 that time when he came on the scene?

4 THE WITNESS: My best recollection is that he owned  
5 the car.

6 THE COURT: No. What was the question? What  
7 question? You say "He owned the car".  
8 That wasn't what the officer said, was it?  
9 What did he say?

10 THE WITNESS: I don't really recall what the  
11 officer said.

12 THE COURT: You just don't recall, is that it?

13 THE WITNESS: Well, I know that --

14 THE COURT: Either you recall or you cannot  
15 recall.

16 THE WITNESS: Right.

17 THE COURT: If you can recall, please give us  
18 your best recollection of what was said.  
19 If you cannot recall, do not guess.

20 THE WITNESS: Okay. I can't recall.

21 BY MR. ABRAMOWITZ:

22 Q. Okay, but it was something to the effect "Did you steal  
23 this car" or "Do you own this car", is that correct?

24 A. Something to that effect.

25 Q. Okay, and he responded what?



1 A. "Yes".

2 Q. And then he made some, - he said he stole it in Akron,  
3 Ohio, did you testify to that, or don't you know?

4 A. I don't recall.

5 Q. I don't want you to say more than you said on direct,  
6 but at that point if he responded "Yes", the question  
7 must have been "Did you steal this car", right? It  
8 wasn't "Do you own this car", because if he responded  
9 "Yes" to that, then he wouldn't have admitted stealing  
10 the car, right, so the question was to the best of your  
11 recollection now "Did you steal the car"?

12 A. Yes.

13 Q. Okay, and prior to the time that the policeman had  
14 asked "Did you steal the car" you had not given him his  
15 Miranda warnings, correct?

16 A. Right.

17 Q. But you definitely suspected him of being in possession  
18 of a stolen car, is that correct?

19 A. Yes.

20 THE COURT: Anything else, Mr. Wagner?

21

22 REDIRECT EXAMINATION BY MR. WAGNER:

23 Q. Two questions, your Honor. Mr. Roth, you testified that  
24 Mr. Jackson told you there was an Al Smith with him?

25 A. Yes, sir.

1 Q. And did you believe at that time there may be an Al Smith  
2 in the vicinity?

3 A. Yes, sir, I did.

4 Q. And you also testified that you could not recall specif-  
5 ically the questioning or the comment you made to  
6 Mr. Jackson the second time at the vehicle?

7 A. That's correct.

8 Q. Prior to arrival of the backup unit, is that correct?

9 A. Yes.

10 Q. Do you recall whether or not those questions involved  
11 his possession of the automobile?

12 A. Yes, sir, they did.

13 Q. They did involve possession of the automobile or you  
14 do recall or do you not recall?

15 A. Did they, - well, yes.

16 Q. I will ask it again. Do you recall?

17 MR. ABRAMOWITZ: I object. He answered the question.

18 THE COURT: Overruled.

19 BY MR. WAGNER:

20 Q. Do you recall whether or not your questioning of  
21 Mr. Jackson prior to arrival of the backup vehicle  
22 involved possession of the car?

23 A. Oh, my question?

24 Q. That's right.

25 A. It did not involve any questions about the vehicle.



1 RE CROSS EXAMINATION BY MR. ABRAMOWITZ:

2 Q. But they involve questions of who he was, of himself,  
3 about who he was, is that correct?

4 A. It involved questions about his friend.

5 Q. And about himself because you asked him for identification?

6 I will withdraw the question. Forget it. Thank you.

7 THE COURT: Thank you, Mr. Roth.

8 THE WITNESS: Thank you.

9 THE COURT: Next witness, please.

10 MR. WAGNER: Mr. Taylor.

11  
12  
13 \* \* \* \* \*  
14  
15

16 J A M E S A. T A Y L O R (143 North Spruce Street, Batavia,  
17 New York), a Witness called by and in behalf of the Government,  
18 having been first duly sworn, was examined and testified as  
19 follows:  
20

21 DIRECT EXAMINATION BY MR. WAGNER:

22 Q. Mr. Taylor, what is your occupation, please?

23 A. City of Batavia police officer.

24 Q. And how long have you worked there?

25 A. Little over five years.



1 Q. Can you tell us the general nature of your duties there?

2 A. I am assigned as a patrolman usually on routine patrol  
3 of the city as far as vehicle and traffic and preliminary  
4 criminal investigation.

5 Q. And were you employed in this capacity on June 14, 1973?

6 A. Yes.

7 Q. And did there come a time on June 14, 1973 when in your  
8 duties as a Batavia patrolman you came in contact with  
9 an individual who was later identified to you as  
10 Mr. Michael Jackson?

11 A. Yes, there was.

12 Q. Can you identify Mr. Jackson?

13 A. Yes, I can.

14 Q. Can you do that, please, for us?

15 A. Yes, it is the fellow sitting over there with the blue  
16 shirt with the white stripe around it.

17 Q. Let the record reflect that Mr. Taylor has identified  
18 the defendant, Mr. Jackson. Could you describe for us,  
19 please, your first contact with Mr. Jackson on June 14,  
20 1973?

21 A. It was around 11:20, 11:25 on that evening, June 14th.  
22 It was at the rear of 216 East Main Street in Batavia.  
23 I received a call from our headquarters that another  
24 patrolman has called for assistance at that location  
25 due to the fact that he was talking with an individual

1 and he requested a backup officer assigned to him as he  
2 thought maybe he had a stolen vehicle and a subject  
3 involved at that time.

4 Q. And could you just go on and describe for us the events  
5 as they occurred that evening?

6 A. Yes. I had just come out of the police station at that  
7 time and I heard the transmission so I turned left  
8 heading east on Main Street in Batavia and I traveled  
9 down and I saw Patrolman Richardson walking the Main  
10 Street beat at that time, who had earlier called in a  
11 license plate number, requesting a data check on it to  
12 see if the car was stolen, so I picked him up due to the  
13 fact he was having radio trouble with his walkie -talkie  
14 and I advised him that the response had come back that  
15 the car was stolen out of the State of Ohio and I asked  
16 him where the car was and he directed me to a location  
17 at the rear of 216 East Main Street and at this time  
18 we were met with Patrolman Roth and a subject that was  
19 later identified as Michael Jackson and we started  
20 asking Mr. Jackson a few questions and then he was  
21 placed under arrest.

22 Q. Would you tell us exactly what transpired when you met  
23 Mr. Jackson and Mr. Roth in the alleyway?

24 A. Well, as Officer Richardson and myself were getting out  
25 of the police car, Officer Richardson asked Mr. Jackson



1 if it was his car and Mr. Jackson stated "No" and I asked  
2 him whose car it was and Mr. Jackson stated "I don't know,  
3 I stole it". At this time I told him he was under  
4 arrest for thievery of the car and he was told to put  
5 his hands on the police car and he was searched. He  
6 was handcuffed and he was placed into the police car and  
7 was taken to the City of Batavia Police Headquarters.

8 Q. And can you tell us what happened at that point?

9 A. Well, when he was brought into police headquarters he  
10 was taken into one of the typing rooms we have at  
11 headquarters. The handcuffs were removed by Officer  
12 Richardson and at this time I told Mr. Jackson that he  
13 has a right to remain silent; anything he says can and  
14 will be used against him in a court of law; you have a  
15 right to talk to a lawyer and have him present while  
16 you are being questioned and if you cannot afford a  
17 lawyer, one will be appointed to represent you while  
18 you are being questioned if you wished. I asked him if  
19 he understands these things I just said to him and he  
20 stated yes, he did.

21 Q. Can you tell us what else happened?

22 A. Well, we asked Mr. Jackson a few questions as to his  
23 identity, where he was from, basically a little history  
24 of his life, what he has done in the time, where he took  
25 the car from, questions of this sort; age, date of birth,

1 information like this, and he answered all the questions  
2 that we asked him.

3 Q. Did Mr. Jackson at any time resist your questioning?

4 A. No.

5 MR. ABRAMOWITZ: I am sorry.

6 THE COURT: He said did he at any time resist your  
7 questioning.

8 MR. ABRAMOWITZ: I wonder if I could have the last  
9 answer that preceded the last question, if  
10 I could have that read back.

11 (Answer read as follows:

12 "A. Well, we asked Mr. Jackson a few  
13 questions as to his identity, where he was  
14 from, basically a little history of his  
15 life, what he has done in the time, where  
16 he took the car from, questions of this  
17 sort; age, date of birth, information like  
18 this, and he answered all the questions  
19 that we asked him.")

20 BY MR. WAGNER:

21 Q. Did Mr. Jackson tell you at anytime he desired a lawyer?

22 A. No, he didn't.

23 Q. Did Mr. Jackson give you all of the information freely  
24 and voluntarily?

25 A. Yes, he did.



1 MR. ABRAMOWITZ: I object to that, your Honor. That  
2 is a conclusion.

3 THE COURT: Overruled.

4 MR. WAGNER: I have no further questions from  
5 Mr. Taylor.

6  
7 CROSS EXAMINATION BY MR. ABRAMOWITZ:

8 Q. Officer, - you are Officer Taylor, correct?

9 A. Yes.

10 Q. Officer Taylor, isn't it a fact that when you approached  
11 the defendant you confronted him with the fact that the  
12 car was stolen?

13 A. It had been brought to my attention the car was stolen.

14 Q. No. I am saying you confronted the defendant with the  
15 fact that the car was stolen?

16 A. Yes.

17 Q. Okay. You said "This is a stolen car" or "Did you steal  
18 this car", is that correct?

19 A. I asked him "Whose car is it", and he said "I don't know,  
20 I stole it".

21 Q. Well, I show you what has been marked for identification  
22 as Court Exhibit 3, which is a report submitted by you.  
23 In Paragraph 5 it says, does it not, "At this time  
24 Patrolman Richardson and Taylor arrived and when the  
25 subject was confronted with the fact that the car was

1 stolen, he readily admitted he had stolen the car", is  
2 that correct?

3 A. I didn't make this report out. That is not my statement.

4 Q. Okay. Well, let me ask you this, does it refresh your  
5 recollection as to what occurred?

6 A. Basically, yes.

7 Q. Okay, so basically was the defendant confronted with the  
8 fact that the automobile was stolen?

9 A. I didn't come out and say the car was stolen. I asked  
10 him whose car it was.

11 Q. Well, to the best of your recollection you asked him  
12 whose car it was, is that correct?

13 A. Yes.

14 Q. And he said that he stole it, correct?

15 A. He said, "I don't know, I stole it".

16 Q. Okay. You testified, did you not, that you had received  
17 a call on the radio from Officer Roth in which he said  
18 that he thought that he had a stolen vehicle and that  
19 he had a subject, is that correct?

20 A. Yes.

21 Q. And that is what prompted your attention to the area in  
22 which Michael Lee Jackson was, correct?

23 A. Well, what really prompted my attention there, I was  
24 told to go there by our headquarters.

25 Q. Okay, and he was never given his Miranda warnings so far



1 as you know prior to the time he was placed under arrest,  
2 is that correct?

3 A. Not as I know of.

4 Q. Okay, and after he was placed under arrest he gave you  
5 background information essentially, right, isn't that  
6 right?

7 A. After the warning was given, yes.

8 Q. Do you, by the way, know when the defendant was charged  
9 with any state crime?

10 MR. WAGNER: Your Honor, I will object. I think  
11 that is basically outside the scope of  
12 the suppression hearing.

13 THE COURT: Overruled.

14 BY MR. ABRAMOWITZ:

15 Q. Do you know when he was charged with any --

16 A. What do you mean "state crime"?

17 Q. Was the defendant ever charged with a state offense?

18 THE COURT: Do you mean when the officer arrested  
19 him? I suppose at that time there was a  
20 charge.

21 BY MR. ABRAMOWITZ:

22 Q. Was a written charge, state criminal charge, ever leveled  
23 against the defendant?

24 A. Our charge?

25 Q. Your charge.

1 A. Our charge was grand larceny.

2 Q. Was there any other charge?

3 A. Not that I know of.

4 Q. Okay. Are you aware of the fact that --

5 THE COURT: When you say "grand larceny", you  
6 arrested him. Was he taken before the  
7 city court judge in Batavia for arraignment?

8 THE WITNESS: I can't answer one way or the other.  
9 I believe he was the next morning.

10 THE COURT: All right.

11 BY MR. ABRAMOWITZ:

12 Q. Okay. You don't know whether he was the next morning,  
13 do you?

14 A. No, I don't.

15 Q. Do you know that the only accusation filed, the only  
16 accusation filed charging state, - a state offense  
17 against Michael Lee Jackson was a complaint charging  
18 criminal possession of stolen property in the second  
19 degree; do you know that?

20 A. Well, this was the charge that was leveled against him  
21 at the time he was placed under arrest.

22 Q. And do you know that that charge was not leveled against  
23 him until June 19, 1973?

24 A. I have no knowledge of this.

25 Q. If that were true, no charge would have been leveled



1           against him for a full five days after his arrest, is  
2           that correct?

3   A.     If the information you are telling me is correct, yes.

4   Q.     And did you know, in fact, he was not arraigned until  
5           June 19, 1973, even on the state charge?

6   A.     I couldn't tell you. I don't know.

7   Q.     You have no knowledge one way or the other, is that  
8           correct?

9   A.     That's correct.

10  MR. ABRAMOWITZ:                   Will you mark this, please.

11                                   (Defendant's Exhibit Number 1 marked  
12                                   for identification.)

13  BY MR. ABRAMOWITZ:

14  Q.     Officer Taylor, I show you what has been marked for  
15           identification as Defendant's Exhibit 1, which is a  
16           Xerox copy of a felony complaint, dated June 19, 1973,  
17           lodged against Michael Lee Jackson, and I want to know  
18           if this refreshes your recollection as to what charge  
19           Michael Lee Jackson was charged with by you; that is by  
20           the Batavia Police Department, and if it refreshes your  
21           recollection as to when that charge was made?

22  A.     Well, at the time, - my understanding at the time he was  
23           placed under arrest by our department, I believe it was  
24           for grand larceny. I take it that is what it was, for  
25           stealing an automobile, but I don't know.

1 Q. You don't know of your own personal knowledge?

2 A. No, I don't.

3 Q. And I take it then that Defendant's Exhibit 1 does not  
4 refresh your recollection, is that correct?

5 A. No, it don't.

6 THE COURT: You, Richardson and Roth are there  
7 at the scene and one of you put him under  
8 arrest. Who put him under arrest?

9 THE WITNESS: I told him he was under arrest.

10 THE COURT: You did, so when you go back to yor  
11 station, then you have to fill out certain  
12 forms, is that true?

13 THE WITNESS: Yes.

14 THE COURT: As the arresting officer.

15 THE WITNESS: Yes.

16 THE COURT: Wouldn't you then appear the following  
17 day with him for arraignment in City Court?

18 THE WITNESS: Well, Officer Roth took care of the  
19 whole thing.

20 THE COURT: Officer Roth did?

21 THE WITNESS: Yes.

22 MR. ABRAMOWITZ: Your Honor, can we recall --

23 THE COURT: I would like to, if this is going to  
24 be a problem, Mr. Abramowitz, let us get  
25 the people who are familiar with what



1 occurred.

2 MR. ABRAMOWITZ: Can I recall Officer Roth at this  
3 time for purposes of cross examination on  
4 the issue of the arrest and what transpired  
5 after that?

6 THE COURT: Are you finished with --

7 MR. ABRAMOWITZ: I am finished with this witness at  
8 this time, yes, sir.

9 THE COURT: Do you have any further questions  
10 of Mr. Taylor?

11 MR. WAGNER: No, your Honor.

12 THE COURT: You did not go in the following day  
13 at his arraignment or you did not follow  
14 up as far as any further charge?

15 THE WITNESS: No. Officer Roth did.

16 THE COURT: Officer Roth, all right. Very well.  
17 Thank you, Mr. Taylor.

18 MR. ABRAMOWITZ: Your Honor, can we recall Officer  
19 Roth at this time?

20 THE COURT: Could you have the officer step in.

21

22

23

\* \* \* \* \*

24

25

1 H A R R Y M I C H A E L R O T H, a Witness called by and  
2 in behalf of the Government, having been previously duly sworn,  
3 resumed the witness stand and testified further as follows:  
4

5 RECROSS EXAMINATION BY MR. ABRAMOWITZ:

6 Q. Officer Roth, you were the person who was in charge of  
7 processing the defendant after he had been arrested, is  
8 that correct?

9 A. Well, "processing", now, what do you mean?

10 THE COURT: Why don't we get to the point, Mr.  
11 Abramowitz. The last witness, Mr.  
12 Abramowitz was asking about what happened  
13 after arrest. He was arrested that  
14 evening. Was he taken for arraignment in  
15 the Batavia City Court and what charge  
16 was placed against him and what was the  
17 charge and when was this done? Do you  
18 have some paper there you want to show  
19 the witness?

20 BY MR. ABRAMOWITZ:

21 Q. Yes. Officer Roth, I show you what has been marked for  
22 identification as Defendant's Exhibit 1, an accusatory  
23 instrument, felony complaint, people of the State of  
24 New York versus Michael Lee Jackson. It is based on an  
25 affidavit sworn by you and I ask you if this refreshes



1 your recollection as to being able to answer the  
2 questions which the judge just asked you.

3 A. Do you want to ask the question again?

4 Q. Okay. What charge was Michael Lee Jackson charged with  
5 by you?

6 A. Possession of stolen property.

7 Q. Okay, and when was he charged with that?

8 A. The statement was signed that following morning, at  
9 10:00 o'clock.

10 Q. I want to know when was he formally charged with  
11 possession of stolen property.

12 A. Approximately on June 14th, that night, he was charged  
13 with it.

14 Q. Well, in your own mind he was being charged with it,  
15 correct?

16 A. Yes, sir.

17 Q. Okay. When was this felony complaint lodged against  
18 him, and I refer you to the backside of it and ask you  
19 if that refreshes your recollection.

20 A. On June 19th.

21 Q. Okay. Now, that was five days after he had been arrested,  
22 correct?

23 A. Yes, sir.

24 Q. Okay, and it is a fact, isn't it, that not only was he  
25 not charged until five days after he was arrested, but

1 that he was also not arraigned until June the 19th,  
2 correct?

3 A. Yes, sir.

4 Q. So, in other words, he was in jail June 14, 15, 16, 17,  
5 18, and part of the 19th without being charged or  
6 arraigned by the Batavia Police, is that correct?

7 A. As far as my knowledge, that's correct.

8 Q. Okay. Now, someone must have called the FBI in Buffalo  
9 on the night of the 14th or early morning of the 15th,  
10 correct?

11 A. Yes, sir.

12 Q. Did you?

13 A. It was early that night that they called, about the same  
14 time he was brought into the station.

15 Q. Okay.

16 A. The FBI was called.

17 Q. Okay. Now, that was because, I suppose, the Batavia  
18 Police have a working relationship with the FBI, correct?

19 A. I really couldn't --

20 THE COURT: Did you call or somebody else call?

21 THE WITNESS: Somebody else called.

22 BY MR. ABRAMOWITZ:

23 Q. Okay. You would assume that the Batavia Police Department  
24 has a working relationship with the FBI?

25 A. Yes, sir.



1 Q. Okay, and the FBI, to the best of your knowledge,  
2 indicated that someone would be down the next day to  
3 question the defendant, correct?

4 A. Yes, sir.

5 Q. Okay, and you were going to wait and see whether or not  
6 the FBI wanted to charge him with a Federal crime before  
7 you accused him of anything or arraigned him, correct?

8 A. They were, - correct.

9 THE COURT: Mr. Roth, some of these things were  
10 not done, - you were there with him at  
11 the scene?

12 THE WITNESS: Yes.

13 THE COURT: You came back to the station house  
14 with him?

15 THE WITNESS: Yes, sir.

16 THE COURT: What time did you go off duty that  
17 evening?

18 THE WITNESS: 2:00 o'clock the next morning.

19 THE COURT: What do you have at the station  
20 there, do you have a place where prisoners  
21 are kept?

22 THE WITNESS: Our prisoners are transported next  
23 door to the Sheriff's Department.

24 THE COURT: All right. Do you know what  
25 happened to Mr. Jackson?

1 THE WITNESS: Yes, sir. He was placed in jail.

2 THE COURT: What charge? You have to place a  
3 charge against him when you put him in  
4 jail, wouldn't you?

5 THE WITNESS: Yes, possession of stolen property  
6 was the charge that was placed against  
7 him.

8 THE COURT: Who took care of the paperwork?

9 THE WITNESS: The sergeant or the person who was  
10 in charge of the desk at the time.

11 THE COURT: In the ordinary course of business  
12 when you arrest somebody at night you have  
13 the City Court there and they sit every  
14 day, don't they?

15 THE WITNESS: Yes, sir.

16 THE COURT: Wouldn't they be taken into the City  
17 Court the next day and arraigned?

18 THE WITNESS: Yes, sir.

19 THE COURT: Did you take care of any arraignment  
20 the next day as far as Mr. Jackson is  
21 concerned?

22 THE WITNESS: No, sir. I returned the next day to  
23 do so but nothing was done.

24 THE COURT: Who took care of this business from  
25 then on in your department?



1 THE WITNESS: The detective department, - bureau.

2 THE COURT: I know "they", but who is "they"?  
3 What are the names of these men?

4 THE WITNESS: Detective Hamera.

5 THE COURT: Detective Hamera. Did he take charge  
6 of the case from then on?

7 THE WITNESS: I really don't know who took charge  
8 of it at that time. There is four  
9 detectives and I really don't know which  
10 one was in charge of it.

11 THE COURT: All right. I take it that you did  
12 not have the responsibility of calling  
13 the FBI, talking to the FBI agents and so  
14 forth and so on?

15 THE WITNESS: No, sir, I didn't.

16 THE COURT: All right. Finally there came a  
17 time when you, - who then instructed you  
18 to make out this written complaint which  
19 you have signed here?

20 THE WITNESS: Lieutenant Davis.

21 THE COURT: Lieutenant Davis?

22 THE WITNESS: Yes, sir.

23 THE COURT: He is your superior?

24 THE WITNESS: Yes, sir.

25 THE COURT: When did he tell you to do that?

1 THE WITNESS: I think it is the date that it is  
2 signed. I returned the next morning to  
3 do so with the paperwork --

4 THE COURT: Yes.

5 THE WITNESS: For possession of stolen property.

6 THE COURT: Yes.

7 THE WITNESS: At this time they wanted to contact  
8 the FBI.

9 THE COURT: Please.

10 THE WITNESS: The Detective Bureau.

11 THE COURT: Please do not say "they".

12 THE WITNESS: Right.

13 THE COURT: We have enough "theys" around.

14 THE WITNESS: Right.

15 THE COURT: Tell me who the person is. Who told  
16 you not to fill out the paperwork?

17 THE WITNESS: Detective Hamera.

18 THE COURT: All right, so then because of that  
19 you did not?

20 THE WITNESS: Yes, sir.

21 THE COURT: And then nothing further as far as  
22 contact, your contact with the case. Did  
23 you have any further contact until the  
24 19th?

25 THE WITNESS: No, sir.



1 THE COURT: All right.

2 BY MR. ABRAMOWITZ:

3 Q. Okay. So Detective Hamera told you not to bother to  
4 charge him with anything because the FBI was going to  
5 come and question him, right?

6 A. Yes, sir.

7 Q. So you were holding him without charging him with  
8 anything and without arraigning him just so that the  
9 FBI could come and question him, right?

10 A. To my recollection they were --

11 Q. Okay, strike the question. Strike the question. The  
12 fact is that the defendant was not formally charged with  
13 anything until June the 19th, correct?

14 A. Correct.

15 Q. Okay, and the fact is he was not arraigned until June  
16 the 19th, correct?

17 A. Correct.

18 Q. And the fact is he was kept in a jail in Batavia, New  
19 York from the 14th until the 19th, correct?

20 A. Yes.

21 Q. And the fact is that your superior, Lieutenant Hamera,  
22 told you on the 15th when you came back the next morning  
23 not to bother to charge him with anything and not to  
24 bother to arraign him because the FBI wanted to ask him  
25 questions, right?

1 A. Not to bother to, - I don't know, he didn't, - Lieutenant  
2 Hamera didn't state why this was being done.

3 Q. But you knew that the FBI was going to come, right?

4 A. That's correct. I knew the FBI was going to come.

5 Q. So that's why you weren't going to bother to charge him  
6 with anything because you were suspicious of the fact  
7 that this could very well be a Federal crime, interstate  
8 transportation of a stolen motor vehicle, correct?

9 A. Correct.

10 Q. All right, and so that's why you had the Federal  
11 authorities come in and you weren't going to bother with  
12 it, correct?

13 A. Correct.

14 MR. ABRAMOWITZ: Okay. Thank you.

15 THE COURT: Nothing further.

16  
17  
18 \* \* \* \* \*

19  
20  
21 R O G E R L E E R I C H A R D S O N (5073 Batavia-Elba  
22 Town Line Road, Batavia, New York), a Witness called by and in  
23 behalf of the Government, having been first duly sworn, was  
24 examined and testified as follows:  
25



1 THE COURT:

Excuse me a minute, Mr. Richardson.  
I have another matter which I should take  
care of with the attorneys and the  
Immigration Department.

(Short recess.)

8 \* \* \* \* \*

11 R O G E R L E E R I C H A R D S O N, a Witness called by  
12 and in behalf of the Government, having been previously duly  
13 sworn, resumed the witness stand and testified as follows:

15 DIRECT EXAMINATION BY MR. WAGNER:

16 Q. What is your occupation, please?

17 A. Police patrolman, City of Batavia.

18 Q. How long have you held that position?

19 A. Approximately seven and a half years.

20 Q. Could you describe for us the general nature of your  
21 duties?

22 A. The general natures are accident investigation,  
23 investigating complaints, traffic citations, issuing and  
24 such.

25 Q. Were you employed in this capacity on June 14, 1973?

1 A. Yes, sir, I was.

2 Q. Did there come a time on June 14, 1973 when you  
3 encountered an individual who was later identified to  
4 you as Michael Jackson?

5 A. Yes, sir, that's correct.

6 Q. Do you see that man in the courtroom today?

7 A. Yes, I do.

8 Q. Could you identify him for us, please?

9 A. Yes, sir. He is the gentleman sitting to my left at  
10 the table with the black shirt on.

11 Q. Let the record show that Mr. Richardson has identified  
12 the defendant, Mr. Jackson. Could you describe for us,  
13 please, your first contact with Mr. Jackson on June 14,  
14 1973?

15 A. Yes, sir. I was on "B" patrol in the City of Batavia  
16 when I received a call from police headquarters to go  
17 to the Selective Service Building, as we had had an  
18 alarm come in and they wanted us to, - it was actually  
19 for the Army Reserve but they wanted us to check the  
20 Selective Service Bureau, so I proceeded down there and  
21 was checking the building out and was about ready to  
22 call back into headquarters when I was encountered by  
23 Patrolman Michael Roth. He stated that in reference to  
24 the above, or to the complaint which was a possibility  
25 of a break-in at the Selective Service Bureau, that there



1 was an individual to the rear of 216 East Main who had  
2 been sitting in a car who was very suspicious, that had  
3 out-of-state plates on it, Ohio, and I proceeded back  
4 with Officer Roth and at this point there was nobody  
5 in or around the vehicle and I stated maybe we ought to  
6 run a ten twenty-nine. A ten twenty-nine is merely an  
7 investigation to find out if this might possibly be a  
8 stolen vehicle and so I, - we proceeded to call  
9 headquarters and they ran a teletype message out.

10 THE COURT: Mr. Richardson, when you call head-  
11 quarters, what information would you give  
12 to them about the car?

13 THE WITNESS: Well, our police code would be "I  
14 would like a ten twenty-nine on license  
15 number, Ohio plate number", and give him  
16 the license number.

17 THE COURT: I see. Would you describe the  
18 vehicle, make, model of the vehicle?

19 THE WITNESS: Yes, sir.

20 THE COURT: And you did?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. Go ahead, Mr. Wagner.

23 BY MR. WAGNER:

24 Q. Could you just continue telling us?

25 A. Yes, sir. So it takes, it took a few minutes to get the

1 teletype going and I was having trouble with my radio.  
2 In fact, I used the radio in Officer Roth's gig to call  
3 in the ten twenty-nine, and I proceeded, I was contacted,  
4 ten nineteen, or go into headquarters to pick up a new  
5 radio as we were having trouble with this one, so I was  
6 on my way back into the station when a call came back  
7 to me but it was coming in garbled on my radio, but  
8 Officer Taylor was coming down Main Street and he  
9 observed me and so he said "Hop in, this car you just  
10 ran a ten twenty-nine on is a stolen vehicle", and so  
11 I jumped in the car and we proceeded to the rear of  
12 216 East Main where this motor vehicle was parked and at  
13 this point, I observed Officer Roth talking with the man,  
14 the person who I identified already, and we got out  
15 of the car and when I got out of the car I asked him,  
16 I says, "Is that your car", and he said "No", and then  
17 Officer Taylor asked him a question and as I was coming  
18 around the car --

19 THE COURT:

Can you recall now what Officer  
Taylor said, what question he asked?

21 THE WITNESS:

No, sir, your Honor. I was coming  
around the car and I am afraid I wasn't  
listening exactly to what Officer Taylor had  
said. As I got to the other side of the  
car I heard Officer Taylor say "You are



1 under arrest", and it was at this point  
2 that Michael Lee Jackson was placed against  
3 the car in a leaning rest position, front  
4 forward leaning rest position to search,  
5 and then we handcuffed him and then Mr.  
6 Jackson was taken to police headquarters  
7 and in the motor vehicle of Officer  
8 Taylor's and I followed up with the stolen  
9 car and parked that to the rear of police  
10 headquarters and then we went inside the  
11 police headquarters and then I heard  
12 Officer Taylor give him the Miranda  
13 warnings.

14 MR. ABRAMOWITZ:

I object, your Honor, if he is saying  
15 Miranda warnings he should state what he  
16 heard.

17 THE COURT:

What he said, all right. What do you  
18 recall that Officer Taylor said?

19 THE WITNESS:

"You have a right to remain silent;  
20 anything you say can be and will be held  
21 against you in a court of law; you have  
22 a right to an attorney. If you cannot  
23 afford an attorney, one will be appointed  
24 to you by the courts".

25 BY MR. WAGNER:

1 Q. Okay. Continue, please.

2 A. So after the Miranda warning was issued him, we asked,  
3 we started asking questions and Mr. Jackson answered  
4 the questions as we asked.

5 Q. Could you tell us what questions were asked and what  
6 Mr. Jackson's answers were, please?

7 A. We asked him where he obtained the car. He stated, I  
8 believe he said Akron, Ohio, and then he stated, or we  
9 asked him "How long have you had the car", and he said  
10 "A couple months." or "A couple weeks", I am sorry, a  
11 couple weeks, and asked him how he got as far as he did  
12 because he said he only had three cents or something like  
13 this in his pocket and he said "Well", he says "I got it  
14 the same way I got the car. I siphoned gas out of  
15 other cars".

16 Q. Did Mr. Jackson at any time resist your questioning?

17 A. No, sir. He spoke freely and didn't hold back on us.  
18 In fact, he gave us information freely, quite freely.

19 MR. ABRAMOWITZ: Note my objection to that.

20 THE COURT: All right.

21 BY MR. WAGNER:

22 Q. Did he at anytime tell you he wanted to speak to a  
23 lawyer?

24 A. No, sir, he never did.

25 Q. Did he at anytime during the conversation tell you he



1 wished to stop the questioning?

2 A. No, sir, he didn't.

3 MR. WAGNER: All right. I have no further  
4 questions.

5 THE COURT: Did you have anything further to do  
6 with this case, Mr. Richardson, the next  
7 day or the following days, arraignment or  
8 anything like that?

9 THE WITNESS: No, your Honor, I didn't.

10 THE COURT: All right. Mr. Abramowitz, do you  
11 have any questions?  
12

13 CROSS EXAMINATION BY MR. ABRAMOWITZ:

14 Q. Prior to the time the defendant was arrested, he had not  
15 been given Miranda warnings to the best of your  
16 knowledge, is that correct?

17 A. That's correct, sir.

18 Q. Did the defendant tell you how much indication he had?

19 A. I don't believe he did.

20 Q. Do you recall him saying that he had a sixth grade  
21 education?

22 A. Is this prior to the time of the arrest or after?

23 Q. Prior to the time of the arrest or while you were  
24 questioning him allegedly after the arrest? At anytime  
25 did he tell you he had a sixth grade education? You say

- 1       you took background from him, right?
- 2   A.    Yes, some, right, I did.
- 3   Q.    Does background information include questions about  
4       education?
- 5   A.    Possibly, yes. I can't remember if I asked him about  
6       his education or not.
- 7   Q.    Okay. He had only three cents on him, is that correct?
- 8   A.    Yes, sir. ✓
- 9   Q.    And did he tell you that he hadn't eaten in a long time?
- 10  A.    Yes, sir, that he did.
- 11  Q.    All right. What time did you begin to question him at  
12       the police headquarters?
- 13  A.    Oh, roughly 11:30, quarter to 12:00.
- 14  Q.    And you continued to question him around what time? At  
15       least the early morning of the 15th, right.
- 16  A.    Yes, sir, that's correct.
- 17  Q.    Okay. About 2:00 o'clock in the morning of the 15th,  
18       would you say?
- 19  A.    I don't believe we questioned him that long.
- 20  Q.    1:00 o'clock?
- 21  A.    Possibly 1:00.
- 22  Q.    And you knew that he was hungry, right?
- 23  A.    Yes, sir.
- 24  Q.    And you knew he had been out; - was it cold at that  
25       time?



1 A. No, sir

2 Q. You knew he had been outside and he hadn't eaten and he  
3 had three cents in his pocket and he had about a sixth  
4 grade education, correct?

5 A. Yes, sir.

6 Q. Did you offer him any food? Did you give him a meal?

7 A. No, we didn't. We did offer him some coffee.

8 Q. Did you give him a meal?

9 A. No, sir.

10 Q. Okay. Is there any place in any of the reports that you  
11 have made out where anyone indicates that he was questioned  
12 after he was arrested?

13 A. Would you repeat that again, please?

14 THE COURT: Right at the scene or after he got  
15 back to the station?

16 BY MR. ABRAMOWITZ:

17 Q. After you got back to the station house. Is there any  
18 report that says that he was questioned at the station  
19 house that you know of?

20 A. Not to my knowledge.

21 Q. Okay. Is it a normal practice to make out such reports  
22 when questioning is done?

23 A. Yes.

24 Q. Okay, but no reports were made out in this case, is  
25 that correct?

1 A. To my knowledge, no, sir.

2 Q. Okay, and is it a normal practice to have a person once  
3 you are back at the police station that you are going  
4 to question, to sign a waiver of rights form? You know  
5 what I mean by a waiver of rights form?

6 A. Yes, sir.

7 Q. It is a common practice, right?

8 A. Yes.

9 Q. All right. Could I see the waiver of rights form, please?

10 THE COURT: Do you have any form that was signed?

11 MR. WAGNER: Your Honor, we have nothing in that  
12 respect.

13 BY MR. ABRAMOWITZ:

14 Q. Well, did he sign a waiver of rights form?

15 A. No, sir.

16 THE COURT: We will take a recess at that time  
17 and be back in about ten minutes.

18 MR. ABRAMOWITZ: Your Honor, could I request that you  
19 instruct the witness not to discuss this  
20 case with any of the other witnesses in  
21 the case?

22 THE COURT: All right. Please, until we finish  
23 cross examination.

24 THE WITNESS: Yes, sir.



1 PROCEEDINGS: After recess, 11:47 a.m.

2 APPEARANCES: As before noted.

3 (Defendant present.)

4  
5 ROGER LEE RICHARDSON, a Witness called by  
6 and in behalf of the Government, having been previously duly  
7 sworn, resumed the witness stand and testified further as  
8 follows:

9  
10 CROSS EXAMINATION BY MR. ABRAMOWITZ: (Resumed)

11 Q. Officer Richardson, I believe that at the recess you  
12 had indicated that it is a normal procedure when you are  
13 back at the station house with a defendant and you give  
14 him his Miranda warnings to have him sign a waiver of  
15 rights form, correct?

16 A. It has been done, yes, sir.

17 Q. You stated prior to the recess that that was the normal  
18 procedure, correct?

19 A. I believe it is, yes, sir.

20 Q. Okay. Where are the waiver or rights forms in this case;  
21 do they exist?

22 A. I don't know, sir.

23 MR. ABRAMOWITZ: I make a request of the assistant  
24 United States Attorney to give me any  
25 waiver of rights forms which do exist.

1 MR. WAGNER: Your Honor, we do not have any from  
2 the Batavia Police. Did I give you the  
3 one from the FBI?

4 BY MR. ABRAMOWITZ:

5 Q. Yes. So an abnormal procedure was followed; he was not  
6 asked to sign a waiver of rights form, correct?

7 A. Apparently, yes, sir.

8 Q. Was any written statement taken from him?

9 A. No, sir.

10 Q. Okay. Would it be a normal procedure to take a written  
11 statement once you have a person in the station house  
12 where you have a typewriter?

13 A. I did not take a statement from him.

14 Q. Well, you were there when people were taking the state-  
15 ment, right?

16 A. Yes, sir.

17 Q. Okay. My question then is would it be a normal procedure  
18 to take a written statement once you are back at the  
19 station house where you had pens and paper, typewriters,  
20 ink and facilities to take a written statement?

21 A. Yes, sir.

22 Q. But no written statement was taken in this case, right?

23 A. To my knowledge, no.

24 Q. No written statement was taken and no waiver of rights  
25 forms were signed, right?



1 A. Yes.

2 Q. When was the first time you told the assistant United  
3 States Attorney in charge of the case, Mr. Wagner, that  
4 any statements had been given after the defendant was  
5 back in the station house?

6 A. This morning.

7 Q. Prior to that had he asked you to give any and all  
8 statements which the defendant had made to him?

9 A. It is possible, sir, but see, I wasn't the arresting  
10 officer.

11 THE COURT: Mr. Richardson, after this case, after  
12 you went to the station house you were  
13 there with Officers Roth and the prior  
14 witness, Taylor. Did you have anything  
15 further to do with the case? You sat there  
16 awhile and listened to some questions put  
17 to the defendant?

18 THE WITNESS: Yes, sir.

19 THE COURT: What time did you go off duty that  
20 night?

21 THE WITNESS: 8:00 o'clock in the morning.

22 THE COURT: Did you return to your post or your  
23 station after?

24 THE WITNESS: Yes, sir.

25 THE COURT: For the remaining part of the evening?

1 THE WITNESS: Yes.

2 THE COURT: Did you have anything else to do with  
3 the case?

4 THE WITNESS: No, sir.

5 THE COURT: Go ahead, Mr. Abramowitz.

6 BY MR. ABRAMOWITZ:

7 Q. Okay. Referring your attention again to alleged statements  
8 which were made, did the defendant tell you that he had  
9 been living on potato chips for four days?

10 A. Yes, sir, he did.

11 Q. Okay, and in fact, there were some potato chips in the  
12 car, right?

13 A. Yes, sir.

14 Q. So you knew he had been living on potato chips for four  
15 days and he had three cents in his pocket and you knew  
16 he was hungry and you didn't give him a meal, but you  
17 questioned him, correct?

18 A. Yes.

19 Q. And to the best of your recollection he had about a sixth  
20 grade education, right?

21 A. Yes, sir.

22 Q. Okay, and the first time you ever told the Assistant  
23 United States Attorney that statements had been made  
24 once he was back at the station house was this morning,  
25 correct?



1 A. Yes.

2 Q. Okay. Did you discuss this case with your fellow  
3 officers prior to coming here today?

4 A. Yes, sir.

5 Q. Did you talk about the fact that you were probably in  
6 trouble in getting the statements in which were made at  
7 the scene because no Miranda warnings had been given?

8 A. No, sir.

9 Q. That was never mentioned?

10 A. No, sir.

11 Q. Okay. Do you know of any reason why the statements which  
12 were allegedly made once he was taken back to the station  
13 house were not called to the Assistant United States  
14 Attorney's attention prior to this morning?

15 A. No, sir.

16 MR. ABRAMOWITZ: Okay. Thank you.

17 THE COURT: Anything else, Mr. Wagner?

18 MR. WAGNER: Nothing further.

19 THE COURT: Thank you, Mr. Richardson.

20

21

22

\* \* \* \* \*

23

24

25

1 J A M E S L. B A I R D (6404 Milestrip Road, Orchard Park,  
2 New York), a Witness called by and in behalf of the Government,  
3 having been first duly sworn, was examined and testified as  
4 follows:

5  
6 DIRECT EXAMINATION BY MR. WAGNER:

7 MR. WAGNER: Could I have these marked, please,  
8 for identification.

9 (Government Exhibit Number 1 marked  
10 for identification.)

11 THE COURT: Are there any further Batavia police  
12 officers?

13 MR. WAGNER: No, your Honor.

14 THE COURT: Are there any questions, any need to  
15 have the officers stay any longer, Mr.  
16 Abramowitz?

17 MR. ABRAMOWITZ: At this time, your Honor, I don't  
18 know. I would request they stay until  
19 after Mr. Baird is finished.

20 THE COURT: All right.

21 MR. WAGNER: They are planning on being here.

22 (Government Exhibit Number 2 marked  
23 for identification.)

24 (Government Exhibit Number 3 marked  
25 for identification.)



1 BY MR. WAGNER:

2 Q. Mr. Baird, what is your occupation, please?

3 A. Special agent, Federal Bureau of Investigation.

4 Q. How long have you held that position?

5 A. Almost five years.

6 Q. Can you tell us your general duties with the FBI, please?

7 MR. ABRAMOWITZ: Mr. Wagner, will you speak up,  
8 please.

9 BY MR. WAGNER:

10 Q. Can you tell us your general duties with the FBI?

11 A. Yes. I investigate violations of Federal statutes.

12 Q. Were you employed in that capacity on June 15, 1973?

13 A. Yes, I was.

14 Q. And during the course of your employment on June 15, 1973  
15 did you have occasion to become involved with investiga-  
16 tion of a possible stolen motor vehicle in interstate  
17 transportation?

18 A. Yes. On June the 15th I proceeded to the Genesee County  
19 Sheriff's Office at Batavia, New York, where I contacted  
20 an individual who was confined there by the name of  
21 Michael Lee Jackson.

22 Q. Could you identify for us, please, if you see him in this  
23 courtroom?

24 A. Yes. That is Mr. Jackson sitting over there.

25 Q. Let the record show that Mr. Baird has identified the

1       defendant, Mr. Jackson. Could you tell us specifically  
2       your involvement with Mr. Jackson on June 15th?

3   A.    Yes. I met Mr. Jackson in a room at the Genesee County  
4       Sheriff's Office. Present were myself, Mr. Jackson,  
5       another special agent, Alan M. Davidson, with the FBI;  
6       Detective Sergeant Matthew Hamera of the Batavia, New  
7       York Police Department, and Lieutenant Earl Davis of  
8       the same organization.

9   THE COURT:                   Excuse me, Officer. The last witness  
10                                said, - I thought he said Detective O'Mara.

11   THE WITNESS:                No, it is Hamera, H-a-m-e-r-a is the  
12                                proper spelling.

13   THE COURT:                   Thank you.

14   THE WITNESS:                I advised Mr. Jackson that I wished  
15                                to interview him regarding his possible  
16                                involvement in the theft and interstate  
17                                transportation of a motor vehicle, namely,  
18                                a 1968 Plymouth. I then proceeded to read  
19                                from a form to Mr. Jackson.

20   BY MR. WAGNER:

21   Q.    I will show you what has been marked as Government's  
22       Exhibit 1 and ask you if you will identify that, please.

23   MR. ABRAMOWITZ:            I will stipulate that is the form.

24   THE WITNESS:                I then read to Mr. --

25   THE COURT:                   Thank you.



1 THE WITNESS: To Mr. Jackson.

2 THE COURT: You don't have to read it. That is  
3 what you read from to him?

4 THE WITNESS: Yes, your Honor, it is. I read this  
5 to him and I also made other statements  
6 as I was reading. For example, I said,  
7 "You have the right to remain silent",  
8 and after that I said words to the effect --

9 MR. ABRAMOWITZ: I object to words to the effect.  
10 To the best of your recollection.

11 THE COURT: To the best of your recollection what  
12 did you say?

13 THE WITNESS: To the best of my recollection I said  
14 after that, after I read that statement,  
15 I said "If you want to you can tell me to  
16 leave and I will get up and leave", and  
17 then I said "Do you understand that", and  
18 he said "Yes", he did, and I did likewise  
19 for each one of the statements which I  
20 read to him.

21 BY MR. WAGNER:

22 Q. Okay. Could you tell us then what transpired, please?

23 A. Yes. After I read the form to him and asked him if he  
24 understood it, he stated that he did understand it. He  
25 did not want an attorney at this time and that he would

1 answer questions regarding his possible involvement, as  
2 I have mentioned before. He then signed the form. He  
3 then told me that approximately two weeks prior he had  
4 met a fellow in Detroit, Michigan where he lived. This  
5 fellow was an over-the-road truck driver who had taken  
6 him to Charlotte, North Carolina, promising him that he  
7 could find a job for him. He then had a falling out with  
8 this individual and subsequently got a ride with another  
9 truck driver to Akron, Ohio. While at Akron, Ohio, he  
10 stated that he went to a parking ramp in the downtown  
11 area and stole a 1968 Blue Plymouth Fury III. He said  
12 that he transported this car from that location to  
13 Batavia, New York where he had been arrested and was now  
14 confined. At this time also I prepared a statement which  
15 contained essentially what he had told me and I read this  
16 statement to him and then he signed it.

17 Q. Mr. Baird, I show you Government Exhibit 2 and ask you  
18 to identify that, please.

19 A. This is the statement which I prepared on that day for  
20 Mr. Jackson and it contains his signature as well as  
21 mine and Special Agent Alan M. Davidson who was also  
22 present.

23 Q. At anytime during your questioning of Mr. Jackson, did  
24 he resist your questions?

25 A. No, sir, he did not.



1 Q. Did he at anytime tell you that he wanted to stop the  
2 questioning?

3 A. No.

4 Q. Did he tell you that he wanted a lawyer with him at any  
5 time?

6 A. No, he did not.

7 Q. Mr. Baird, did you keep a log of your transactions with  
8 Mr. Jackson that day?

9 A. Yes, I did. I noted the various times; the time that I  
10 read him the form and the time that he executed that  
11 form; when I started preparing the signed statements;  
12 when I ended and he executed that statement and when the  
13 interview terminated.

14 Q. I show you Government Exhibit 3 and ask you if you can  
15 identify that?

16 A. Yes. This is the log which I maintained and recorded  
17 the times on which I have described.

18 Q. And could you tell us, please, what the times were of  
19 this interview, and the date, please?

20 A. Okay. The date was June 15, 1973. I first advised  
21 Mr. Jackson of the nature of the interview at 12:42 p.m.  
22 At 12:45 p.m. he executed the form which I have mentioned.  
23 12:46 p.m. the interview began. At 1:30 p.m. I started  
24 to prepare the signed statement. At 1:53 p.m. he signed  
25 the statement. At 1:54 p.m. I began to take background

1 information, and at 2:05 p.m. the interview was terminated.

2 MR. WAGNER: Thank you. I would like to offer  
3 these into evidence.

4 MR. ABRAMOWITZ: I don't see any admissibility of the  
5 law, your Honor, at a suppression hearing.

6 THE COURT: I will sustain the objection. The  
7 waiver form, do you object to that?

8 MR. ABRAMOWITZ: Well, not for the purpose of the  
9 hearing.

10 THE COURT: All right, not for the hearing.  
11 Mark it in evidence for the hearing,  
12 please.

13 MR. ABRAMOWITZ: Of course, your Honor, just so the  
14 record is absolutely clear, for whatever  
15 convenience the Court or the Assistant  
16 United States Attorney would like it  
17 marked in evidence here I don't certainly  
18 concede that it will be received in  
19 evidence on the trial of this case.

20 THE COURT: That is understood. I said for the  
21 hearing only.

22 (Government Exhibit Number 1 received  
23 in evidence.)

24 THE COURT: All right. Do you have some questions?

25 MR. ABRAMOWITZ: Yes, your Honor.



1 THE COURT: By the way, before the cross examina-  
2 tion starts, was a Federal charged placed  
3 against him then, Mr. Baird?

4 THE WITNESS: No, sir, it was not. On the 25th,  
5 I believe, of June, I discussed this case  
6 with an assistant United States attorney.  
7 I believe it was Mr. Arcara who authorized  
8 the filing of a complaint.

9 THE COURT: What occurred? You interviewed him  
10 on the 15th and what happened after that?

11 THE WITNESS: Do you mean as far as the delay?

12 THE COURT: As far as the defendant is concerned.

13 THE WITNESS: As far as I know, your Honor, he was  
14 maintained in the Genesee County Jail.  
15 He was not taken into Federal custody, I  
16 don't believe, until June the 25th.

17 THE COURT: I see. Do you know or can you tell  
18 us what happened between the 15th and the  
19 25th?

20 THE WITNESS: I know that the defendant was arraigned  
21 in Batavia City Court on the 19th on the  
22 charge of criminal possession of stolen  
23 property.

24 THE COURT: I suppose or at least I feel that  
25 Mr. Abramowitz will ask you the cause.

1                   What was the reason for the delay in  
2                   placing the Federal charge?

3   THE WITNESS:

                  I suppose the only thing I could say  
4                   would just be my work load. In other words,  
5                   the defendant was charged with a state  
6                   crime. It did not appear that he was  
7                   going anywhere. He still had to answer  
8                   to that charge. I assumed that once I did  
9                   file a complaint, an affidavit, that a  
10                  warrant would be issued, that he would be  
11                  taken into Federal custody and that the  
12                  State charge would subsequently be dismissed.

13   THE COURT:

                  Go ahead, Mr. Abramowitz.

14  
15   CROSS EXAMINATION BY MR. ABRAMOWITZ:

16   Q.     Agent Baird --

17   THE COURT:

                  Excuse me, Mr. Abramowitz and Mr.  
18                  Wagner, were there any other detainers or  
19                  charges that were pending against Mr.  
20                  Jackson?

21   MR. ABRAMOWITZ:

                  No, there weren't, your Honor.

22   THE COURT:

                  Are there any others at this time?

23   MR. WAGNER:

                  I believe not, your Honor.

24   THE COURT:

                  Do you know of any, Mr. Abramowitz?

25   MR. ABRAMOWITZ:

                  No, your Honor, I don't.



1 THE COURT: He is not on parole or probation or  
2 anything like that?

3 MR. ABRAMOWITZ: Not that I know of, your Honor.

4 THE COURT: Do you know if there is any parole?

5 MR. WAGNER: Your Honor, I believe he has a  
6 probation for an offense in Michigan.

7 THE WITNESS: That is correct, your Honor. He is  
8 a probation violator from the State of  
9 Michigan.

10 MR. ABRAMOWITZ: Just a minute. We don't know that  
11 he is a violator. He was on probation.

12 THE WITNESS: Well, he was on probation.

13 THE COURT: He was on probation.

14 THE WITNESS: He was on probation at the time of  
15 his arrest, yes, sir.

16 THE COURT: All right. Go ahead, Mr. Abramowitz.

17 BY MR. ABRAMOWITZ:

18 Q. Agent Baird, who was it that told you to go to Batavia  
19 on the day of June 15, 1973, do you recall?

20 A. There was no particular individual who told me. I was  
21 made aware of the fact that --

22 Q. By whom?

23 A. Batavia Police Department had gotten what we call a hit  
24 through the National Crime Information Center on a  
25 particular vehicle and I subsequently had conversation

1 with an official of the Batavia Police Department.

2 Q. Who was that?

3 A. It would have been one of two people, either Detective  
4 Matthew Hamera or Lieutenant Earl Davis.

5 Q. Did they tell you they would hold him so that you could  
6 come and question him?

7 A. No, sir, they did not.

8 Q. What did they tell you, to the best of your recollection?

9 A. They told me that he was charged with a State crime and  
10 that he was confined in the Genesee County Jail.

11 Q. You don't recall which of them told you that on the 15th?

12 A. No, sir, I don't.

13 Q. And you don't know of your own personal knowledge whether  
14 or not he was in fact charged with any crime, do you,  
15 on the 15th, whether he was charged with a State crime?

16 A. All I know is what I have said in that regard.

17 Q. When you went out there you never saw any complaint which  
18 had been lodged against him, did you?

19 A. No, sir. I cannot positively say that I did.

20 Q. Okay, and what time did you get there?

21 A. To the best of my recollection I probably arrived around  
22 noontime.

23 Q. Okay. Did anyone tell you that the defendant had not  
24 yet been arraigned on the State charge?

25 A. Do you mean prior to my talking to the defendant?



1 Q. That's correct.

2 A. I don't really remember truthfully.

3 Q. Okay.

4 A. I subsequently learned of that fact, I know that particular  
5 day. I don't know whether it was before or after my  
6 talking with the defendant.

7 Q. You learned that at some time or other he had been  
8 arraigned, correct?

9 A. Yes, I did.

10 Q. Okay. You don't know what day he was arraigned, though,  
11 do you?

12 A. I know that he was scheduled to be arraigned on the 19th  
13 of June and that he was in fact arraigned. I was not  
14 present. However, this information was conveyed to me.

15 Q. But prior to the time that you interviewed him on the  
16 15th you knew that he had not been arraigned on the  
17 State charges, correct or incorrect?

18 A. Incorrect. I did not know.

19 Q. You did not know one way or the other?

20 A. That's correct.

21 Q. So you went out there because someone from the Batavia  
22 Police Department called you up and said "We have a  
23 person out here who we think may be guilty of a violation  
24 of Title 18, Section 2312, interstate transportation of  
25 a stolen motor vehicle"?

1 A. No.

2 Q. Well --

3 A. The reason I went out there was because I knew from our  
4 computer in Washington that the Batavia Police Department  
5 had gotten a hit on a stolen motor vehicle that had been  
6 stolen at Akron, Ohio.

7 Q. Subsequently you did have a telephone conversation with  
8 someone from the Batavia Police Department, correct?

9 A. That's right.

10 Q. And someone, either Hamera or Davis told you essentially  
11 to come out to Batavia and interview him and that they  
12 were holding him out there for you so that you could  
13 interview him, right?

14 A. No. They told me that they had arrested the man the  
15 prior evening and that he was charged with a State crime  
16 and that he was confined in the Genesee County Jail.

17 Q. Well, there must have come a time when they said "You  
18 can come out and interview him", or you said "I would like  
19 to interview him", is that right?

20 A. There came a time when I said in that conversation that  
21 I would in fact be over to interview the man.

22 Q. Okay, and you said you would interview him that day,  
23 correct?

24 A. On the 15th, yes, sir.

25 Q. All right, and you began your interview at approximately



1 12:42 in the afternoon, correct?

2 A. That's right.

3 Q. Which, to the best of your knowledge, was certainly more  
4 than twelve hours after his arrest, correct?

5 A. A full twelve hours about, yes, sir.

6 Q. Did you learn that he had had a sixth grade education?

7 A. Yes, I did.

8 Q. Did you learn that he couldn't write well and that is  
9 the reason that you had to write the statement for him?

10 A. That is not why I wrote the statement.

11 Q. Did you learn that he could not write well?

12 A. No, I did not. I learned that he could not read well  
13 because I asked him to read something which was on the  
14 wall in the office that I was sitting in and I learned  
15 at that point that, - it was a four-word sentence on a  
16 plaque of some sort and he picked up the word "the" and  
17 "of", or some similar such very small word and the other  
18 two words which were lengthy he had trouble with. I  
19 asked him, - then I told him what the words were and  
20 asked him if he understood what they meant and he said  
21 he did and then he explained them to me and then I  
22 found out then that he did, in fact, understand what the  
23 words meant but could not read them on his own.

24 Q. Did you know that he had been living on potato chips  
25 for four days prior to the time of his arrest?

1 A. That is not what he told me.

2 Q. Do you know whether or not he was given a meal prior to  
3 the time that you questioned him on the day of the  
4 15th?

5 A. Yes, I do.

6 Q. Was he given a meal?

7 A. Yes. I had to wait for him to eat that noon meal before  
8 I could talk to him.

9 Q. Now, you went back to Buffalo that same day, is that  
10 correct?

11 THE COURT: Excuse me, Mr. Abramowitz. I wonder  
12 if we could suspend for a few minutes.  
13 Judge Henderson would like to see me.  
14 Mr. Wagner, we have a situation here where  
15 the only paper, it appears to me, that  
16 would be a record of holding, - he was  
17 held in jail. He was arrested on the  
18 evening of the 14th and then as far as  
19 we know, it would appear, - was he  
20 arraigned on the 19th in the Batavia City  
21 Court?

22 MR. ABRAMOWITZ: Yes, sir.

23 THE COURT: In the meantime while the officers  
24 are here would you chat with them about  
25 who would have the information?



1 MR. ABRAMOWITZ:

Your Honor, I have the information.  
I was in, - I saw the court record yesterday. There was no piece of paper, and I will put myself on the stand to testify --

2  
3  
4  
5 THE COURT:

You talk to the officers about what records there were or who would have the records available about the authority for holding him in the jail from the 14th to the 19th when the complaint prepared by Officer Roth was filed and then he was brought for arraignment. I will be back in a few minutes.

6  
7  
8  
9  
10  
11  
12  
13 (Recess taken at 12:15 p.m.)  
14  
15

16 \* \* \* \* \*

17  
18  
19 PROCEEDINGS:

After recess.

20 APPEARANCES:

As before noted.

21 (Defendant present.)  
22

23 THE COURT:

We have Mr. Baird on the stand.  
Do you have some other witnesses?  
Is he your last witness?

24  
25

1 MR. WAGNER: That's correct, yes.

2 THE COURT: Do you have some evidence in your  
3 application?

4 MR. ABRAMOWITZ: I would just put myself on the stand  
5 unless the Court accepts my representation  
6 that I have found the only charge placed  
7 against him by the Batavia Police was the  
8 charge placed on the 19th.

9 THE COURT: Maybe you can enter into a stipulation.  
10 Why don't you explain to Mr. Wagner what  
11 your proposal is and maybe we can get a  
12 stipulation.

13 MR. ABRAMOWITZ: Your Honor, it is my understanding  
14 that Agent Baird has called to Batavia to  
15 check on the records.

16 THE COURT: Why don't we just wait and see and  
17 maybe you can come back in a few minutes  
18 and we will get this resolved. All right.  
19 Mr. Baird is sworn. You may continue with  
20 cross examination. Is Mr. Baird the last  
21 witness?

22 MR. WAGNER: That is correct.

23 THE COURT: Maybe we can finish his cross  
24 examination. Can we do that?

25 MR. ABRAMOWITZ: Yes, sir.



1 THE COURT: If this is going to be the end of the  
2 hearing, we might as well get to it.

3 MR. ABRAMOWITZ: I would like to get on the stand and  
4 testify what I saw of the records.

5 THE COURT: Can we do it another way?

6 MR. ABRAMOWITZ: I will be happy to stipulate.  
7  
8

9 J A M E S L. B A I R D, a Witness called by and in behalf  
10 of the Government, having been previously duly sworn, resumed  
11 the witness stand and testified further as follows:  
12

13 CROSS EXAMINATION BY MR. ABRAMOWITZ: (Resumed)

14 Q. After you interviewed the defendant, did you go back to  
15 Buffalo immediately?

16 A. I do not really recall. I could have conducted other  
17 business and left somewhere around 4:00, say. I really  
18 don't remember.

19 Q. To the best of your recollection, when did you speak to  
20 an assistant United States Attorney about this case?

21 A. On June 25th.

22 Q. You never spoke to any assistant United States Attorney  
23 from June 15th to June 25th about this case?

24 A. I cannot say definitely that I did not. I may have had  
25 a very short discussion with Mr. Arcara, but at no time

1 during any such discussion was I presenting the entire  
2 side of the Government case. Your Honor, you previously  
3 asked me a question and in the interim I have thought  
4 of the actual reason and I would like to express that  
5 to you.

6 THE COURT:

All right, fine.

7 THE WITNESS:

8 You previously asked me concerning  
9 the delay in laying a Federal charge  
10 between the time I interviewed the  
11 defendant and the 25th of June. This  
12 delay principally was occasioned by the  
13 fact that before I could adequately make  
14 a presentation of this matter to an  
15 assistant United States Attorney I wanted  
16 to be able to establish two things which  
17 we had to do in other areas of the country.  
18 First of all, I had to establish that the  
19 vehicle was in fact stolen; that the owner  
20 had reported it and under what circum-  
21 stances it had been stolen. That is, was  
22 the car in fact parked in a parking ramp  
23 at Akron, Ohio. Now, secondly, I had to  
24 verify with various local police agencies  
25 in Detroit, Michigan, any previous record  
that this man may or may not have had, and



1                   these two things occasioned the delay.

2 BY MR. ABRAMOWITZ:

3 Q.       Okay, but in any event, you didn't speak to Mr. Arcara  
4       until the 25th of the month to get an authorization,  
5       is that correct?

6 A.       Yes. sir, it is.

7 Q.       At the first interview with the defendant, did he tell  
8       you that he had stolen 8,000 cars?

9 A.       Yes, he did.

10 Q.       Did you think that that would be significant in terms  
11       of getting authorization from Mr. Arcara?

12 A.       Not really. I did not believe the defendant. In fact,  
13       when he said that, I tried to further question him to  
14       satisfy in my own mind if he really knew what 8,000 cars  
15       really looked like all lined up and I don't think he  
16       does.

17 Q.       Do you think that the defendant was having difficulty  
18       that day in remembering things which had occurred?

19 A.       No, I don't think that he was having difficulty remember-  
20       ing things that had occurred. I think he made several  
21       statements which I find hard to believe. This was all  
22       after the actual interview. It was the time of taking  
23       such things as the background information and at the  
24       time we were ready to sign the signed statement and after  
25       I had read it to him. He made certain statements which

1 I found hard to believe and this statement regarding the  
2 theft of 8,000 cars, he said that he wanted to include  
3 that in his signed statement, and that is what I did.  
4 In fact, I wrote it down to be included in his statement  
5 after he had signed it.

6 Q. Okay. In your presence did Detective Davis say "Well, it  
7 is Federal. We were holding him for a Federal charge  
8 and now it is your case", sometime immediately after the  
9 interview; words to that effect?

10 A. I do not remember. However, it is very possible that  
11 he could have said something like that.

12 Q. Could you tell us to the best of your recollection what  
13 was said about placing of Federal charges?

14 A. Well, if I may, I would like to explain what was said  
15 during the course of this investigation about the  
16 charges.

17 Q. Fine.

18 A. Initially, and when I contacted the Batavia Police  
19 Department before I, - on the 15th but before I had  
20 actually left to go to Batavia, either Hamera or Davis  
21 told me that this defendant had admitted to them having  
22 served two prior sentences for the unlawful taking or  
23 possession of a stolen motor vehicle. Therefore, since  
24 this fits within the guidelines that my organization  
25 follows, I advised whichever of the individuals it was



1 that the Federal Government would probably prosecute.  
2 However, at this time I pointed out to them that the  
3 man was in local custody and that he was charged with  
4 a state violation and that any subsequent Federal  
5 prosecution would come, say, within two weeks or at  
6 least one week before this could all take place because  
7 I knew that I would have to verify certain aspects of  
8 this, the theft of the car, the man's record, so on and  
9 so forth. Now, subsequently to that conversation, there  
10 were other conversations. In other words, Lieutenant  
11 Davis or Mr. Hamera wanted to be advised the day that  
12 I actually filed a formal complaint against Jackson and  
13 from time to time I would advise them telephonically  
14 that there had been a delay which had been occasioned  
15 by the fact that I had not received word back from other  
16 areas of the country regarding these matters, but that  
17 just as soon as I did, I would take the appropriate  
18 action. Now, it follows then that at the time of the  
19 interview I think Lieutenant Davis could have made a  
20 statement to this effect.

21 Q. Okay, so he could have said, though you can't specifically  
22 recall, but it is certainly within the realm of  
23 probability that he said "Well, we are holding him for  
24 you fellows until you place your charges", right?

25 A. No, I don't think he would have said like that, in those

1 words. He may have said "All right, this appears to be  
2 a Federal violation. Now, is it your case", and then I  
3 would have said "No, it is not until I actually file  
4 the complaint and take him into custody or the U. S.  
5 Marshals do."

6 Q. You don't recall whether you said that, is that your  
7 best recollection?

8 A. No, I do not. However, if he had said that I would have  
9 definitely replied with those remarks.

10 Q. And would you have also said "We will probably prosecute  
11 federally", again as you told him over the telephone?

12 A. Yes, I probably would have said that.

13 Q. Now, Agent Baird, suppose you had known that the defendant  
14 here had been in jail for fifteen hours, had not been  
15 arraigned, and in fact not charged with anything, would  
16 you have interviewed him if he was being illegally  
17 detained?

18 A. Well, I am not knowledgeable enough to know whether he  
19 was being legally or illegally detained.

20 Q. My question is, assuming that he was being illegally  
21 detained, that he was just being held without any  
22 reason whatsoever by the Batavia Police Department,  
23 would you have questioned him under those circumstances?

24 MR. WAGNER:

25 Your Honor, I would like to object  
to that. I don't see what bearing it has



1 on the suppression hearing.

2 THE COURT:

3 Mr. Wagner, I want to alert you that  
4 in my mind it has a great deal of bearing  
5 upon it. There are state rules which  
6 would apply, state laws which are similar  
7 to the Federal laws that where when a man  
8 is arrested he must be taken before a  
9 magistrate within reason, a reasonable  
10 time, as quickly as possible. The Batavia  
11 City Court was in session on that morning,  
12 according to the testimony of the officers,  
13 and so it may have been that perhaps he  
14 should have been taken before the magistrate  
15 so that in open court his rights could be  
16 explained to him and again, in a neutral  
17 atmosphere of the magistrate be advised  
18 of his right to counsel. The Court could  
19 have checked into his understanding of  
20 the charge; many other things.

21 MR. WAGNER:

22 Well, your Honor, I agree with what  
23 you have said about the facts, but it  
24 seems to me that Mr. Baird is testifying  
25 as to the facts and events --

26 THE COURT:

27 Of course, his state of mind is also  
28 important, just as the state of mind of

1 the officers were when they came upon the  
2 scene. The state of mind of Agent Baird  
3 is important to know what he had in his  
4 mind, what information he had when he  
5 interviewed the defendant, so I will  
6 overrule your objection.

7 MR. WAGNER: May I ask at one further comment?

8 THE COURT: Certainly.

9 MR. WAGNER: Is Mr. Abramowitz asking what was in  
10 his mind or is he asking him a hypothetical  
11 question about something not in his mind?

12 BY MR. ABRAMOWITZ:

13 Q. Well, let me ask another question. If you had known,  
14 if you had believed in your mind that the defendant was  
15 being incarcerated by the Batavia Police completely  
16 illegally without having been charged with anything and  
17 without even having been arraigned, would you have  
18 taken a statement from him under those circumstances?

19 MR. WAGNER: Your Honor, I feel he should ask  
20 what was the state of his mind and then  
21 ask him --

22 MR. ABRAMOWITZ: He said he thought he was charged  
23 with something.

24 MR. WAGNER: Then I think that the question of  
25 Mr. Abramowitz is irrelevant, if he thought



1 something other than he really stated  
2 he thought, and then Mr. Baird has told us  
3 what he thought.

4 MR. ABRAMOWITZ: Your Honor, --

5 THE COURT: I have overruled the objection. The  
6 objection is overruled. You may answer.

7 THE WITNESS: If in my own mind I had felt that  
8 the man was being, quote, illegally held,  
9 unquote, I would have probably have done  
10 everything I could to see that the illegal-  
11 ness of the being held was removed and  
12 then interviewed him.

13 MR. ABRAMOWITZ: Right.

14 THE WITNESS: So, conversely, I would not have  
15 interviewed him until this had been  
16 removed.

17 MR. ABRAMOWITZ: Okay. Thank you very much, Agent  
18 Baird.

19 THE COURT: Anything else? Thank you, Mr.  
20 Baird. Mr. Abramowitz, what is your  
21 understanding of the state of the record  
22 in Batavia?

23 MR. ABRAMOWITZ: It is my understanding, your Honor,  
24 having checked with all the court records  
25 yesterday, late morning or early afternoon,

1 in Batavia, that the defendant was  
2 arrested on the night of June 14, 1973  
3 and was not charged, - was detained by  
4 the Batavia Police until June 19, 1973  
5 without being charged with anything,  
6 without being arraigned on anything; that  
7 on June 19, 1973 apparently because the  
8 FBI was not working as quickly as they  
9 had hoped, he was then charged.

10 THE COURT:

Strike out the "apparently". Just  
11 what the facts are as you understand.

12 MR. ABRAMOWITZ:

He was charged with and arraigned on  
13 the crime of criminal possession of stolen  
14 property in the second degree, which in  
15 the State of New York is a Class E felony,  
16 and Defendant's Exhibit 1 is a true copy  
17 of that original felony complaint, and I  
18 also represent to this Court that I saw  
19 all of the court documents yesterday. I  
20 wanted to Xerox as many of them as I  
21 could, but a very nice lady out there  
22 would only allow me to Xerox one of them  
23 and there was absolutely no other charge  
24 in the file until the 19th of June, 1973.

25 THE COURT:

Do you agree that that is the state



1 of the record?

2 MR. WAGNER:

Your Honor, to the best of our  
3 knowledge that is the state of the record  
4 and we will stipulate to that with Mr.  
5 Abramowitz if he allows us to come back  
6 to the Court and explain if we should  
7 come up with additional information.

8 THE COURT:

I would think you would do that right  
9 away. People nowadays don't get held in  
10 jail without paper. Whatever else we are,  
11 we are a paper society, and it would seem  
12 to me that there must be some paper  
13 directing the jailer to keep a hold on  
14 Mr. Jackson. I believe it is important  
15 in this matter. What next? Your man is  
16 in custody here, Mr. Abramowitz.

17 MR. ABRAMOWITZ:

Yes, sir.

18 THE COURT:

I think that there are some problems  
19 here. Frankly, I think he should have  
20 been taken to the City Court of Batavia  
21 the following morning and arraigned. Mr.  
22 Baird came on the scene and whether he  
23 knew that or not may or may not be  
24 material when he interviewed him. It may  
25 be and it may have something to do with

1                   whether or not the statements that he  
2                   ultimately took from the defendant should  
3                   be admitted here. It would appear to me  
4                   that the officers coming upon the scene,  
5                   that those remarks were made there, -  
6                   he was not in custody; we had this vague  
7                   notion about, according to his statement,  
8                   of somebody else being in the area; either, -  
9                   it could be on several grounds, but it  
10                  would appear to me that there was no  
11                  certainly coercive questioning and the  
12                  officers coming on the scene, either they  
13                  did not have the time to give Miranda  
14                  warnings or under the circumstances it  
15                  would appear that under the law they are  
16                  not required to then and that the questions  
17                  put to the defendant were proper and that  
18                  the responses he made then were, - would  
19                  be admissible.

20   MR. ABRAMOWITZ:               At the time that they came upon him,  
21                                    your Honor?

22   THE COURT:                    I would think so, but I will give  
23                                    you a chance if you want to brief that or  
24                                    argue it, I will certainly listen to it.

25   MR. ABRAMOWITZ:               I would certainly like to.



1 THE COURT:

I think the other part here is really essential. I would appreciate, Mr. Wagner, if your office would do this; evidently Mr. Jackson is on a violation of probation charge somewhere. I would think you ought to look into that situation.

7 MR. WAGNER:

I will do that, your Honor.

8 THE COURT:

I do not like to have him just held here and nothing done about it, but on the other hand, I want to give Mr. Abramowitz an opportunity to make his argument here and I think that they are serious arguments. I am not foreclosing you, Mr. Abramowitz, on your argument about statements made to officers Richardson, Taylor and Roth in the evening, but if some other processing can be taken care of while this goes on, I think it might be a good thing for all concerned.

20 MR. ABRAMOWITZ:

Okay. I would like to be given the opportunity to make that argument, your Honor. The argument very briefly would be that certainly an investigation had changed from an investigatory to accusatory. He was a target --

1 THE COURT:

I am not going to listen to it now.  
Mr. Wagner is going to look into the  
records of Batavia and I would like to  
get some authority from you about what the  
State had to do or should have done and  
what effect the failure to do, if there is  
a failure here of proper arraignment,  
would have influenced the taking of the  
statement making.

10 MR. ABRAMOWITZ:

Yes, your Honor. I can give you  
some authority now, if you like, or I  
can write something for you.

13 THE COURT:

I would prefer if you would write  
something.

15 MR. ABRAMOWITZ:

I will, your Honor.

16 THE COURT:

All right.

17 MR. ABRAMOWITZ:

Shall we set a date for briefing?

18 THE COURT:

When do you want to do it?

19 MR. ABRAMOWITZ:

Maybe I shouldn't have said that.  
As soon as I can. I will have it done  
very quickly, your Honor.

22 MR. WAGNER:

Not today.

23 MR. ABRAMOWITZ:

No, but in terms of the first, - my  
problem with the, - I can easily, your  
Honor, give you authority quickly on the



1 question of whether or not the statement  
2 taken from Agent Baird was admissible,  
3 but I would like to see the testimony,  
4 certainly of at least Officer Roth in  
5 front of me before I write something to  
6 you concerning that.

7 THE COURT: You are assigned?

8 MR. ABRAMOWITZ: Yes, sir.

9 THE COURT: All right. I will direct that that  
10 testimony may be transcribed. Mr.  
11 Knisley, - you meet with him because he  
12 will prepare an order for you.

13 MR. ABRAMOWITZ: Thank you.

14 THE COURT: We will be in recess.

15  
16 (Proceedings herein concluded.)

17  
18 I hereby certify that this record is  
19 true and accurate transcript of the  
20 stenographic notes in this proceeding.

21  
22 *E. F. Knisley*  
23 Official Reporter  
24 U.S. District Court  
25

\*\*\*\*\*

1  
2 UNITED STATES DISTRICT COURT  
3 WESTERN DISTRICT OF NEW YORK

4 \* \* \* \* \*

5 THE UNITED STATES

6 -v-

CRIMINAL DOCKET  
NO. 1973-251

7 MICHAEL LEE JACKSON,

8 Defendant.

9 \* \* \* \* \*

10  
11 Proceedings of trial held before the Hon.  
12 John T. Curtin, United States District Judge, in Part II, United  
13 States Court House, Buffalo, New York, on September 20, 1973.

14 APPEARANCES:

15 JOHN T. ELFVIN, United States Attorney, by  
16 EDWARD WAGNER, Assistant United States  
Attorney.

17 PHILIP ABRAMOWITZ, Esq., Attorney for the  
18 Defendant.

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THE COURT: The case is called ready for trial of United States against Michael Lee Jackson, Criminal Number 1973-251. Both sides ready?

MR. ABRAMOWITZ: Yes, your Honor.

MR. WAGNER: Yes, your Honor.

THE COURT: Do we have a problem? Do you desire to waive trial by jury?

MR. ABRAMOWITZ: Yes, your Honor. The defendant requests, - the defendant does waive his right to a trial by jury.

THE COURT: Do you have a waiver prepared in writing, Mr. Wagner?

MR. WAGNER: No, I don't, your Honor.

THE COURT: Mr. White, do we have a form?

MR. WAGNER: I can get one, your Honor.

THE COURT: No. We may have one.

THE CLERK OF THE COURT: I have one, Judge.

THE COURT: All right, Why don't we use the form.

MR. ABRAMOWITZ: Thank you. I am conferring with my with my client Michael Lee Jackson, reading him the form.

THE COURT: Why don't you read it out loud, Mr. Abramowitz.

MR. ABRAMOWITZ: "United States of America vs. Michael

1  
2 Lee Jackson.

3 "Pursuant to Rule 23(a) of the Federal  
4 Rules of Criminal Procedure, the United  
5 States of America, by the undersigned United  
6 States Attorney and the defendant above  
7 named, hereby consent to the trial of the  
8 above captioned matter without a jury.

9 "Dated: Buffalo, New York, 20 September  
10 1973."

11 THE COURT:

12 Mr. Jackson, I understand you and Mr.  
13 Abramowitz have been talking about this  
14 matter. It is a serious crime with possible  
15 sentence of up to five years. You are  
16 entitled to have a trial by jury and have  
17 the jury assess the credible witnesses who  
18 you can require to appear in court against  
19 you, put them under oath and be subject to  
20 cross examination by your counsel. As far  
21 as the jury right is concerned you may  
22 waive it if you desire but I want you to  
23 understand that there is no requirement  
24 that you waive it. The Court is not, -  
25 there is no question of saving time or  
26 anything like that. As far as you are  
27 concerned this is an absolute right you have



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to a jury trial. There may be some advantages in not having a jury trial. Perhaps your attorney has explained those to you, and again, that is something that you should take into consideration.

Have you had an opportunity to ask Mr. Abramowitz any questions you want to ask in this matter about going to trial with or without a jury?

THE DEFENDANT:

Yes, I have, your Honor.

THE COURT:

And you were able, as I understand, to have a full discussion with him about it and you are satisfied that this is the best course to follow?

THE DEFENDANT:

Yes, your Honor.

THE COURT:

Mr. Abranowitz, as I understand it, you too have thought about this very carefully. We have had several informal meetings after the Court rendered its decision on your motion to suppress and as I understand it in your opinion there are certain advantages to proceed without a jury in this particular matter.

MR. ABRAMOWITZ:

Yes, your Honor, that is correct.

THE COURT:

The form may now be read and executed by

1  
2 the defendant and his counsel.

3 MR. ABRAMOWITZ:

I am signing the form, your Honor.

4 (Form for Waiver of Jury Trial pursuant  
5 to Rule 23(a), Federal Rules of Criminal  
6 Procedure signed and executed by the  
7 defendant and Mr. Abramowitz.)

8 THE COURT:

As I understand, Mr. Wagner, the  
9 Government consents to trial without a jury.

10 MR. WAGNER:

That is correct, your Honor.

11 (Form for Waiver of Jury Trial pursuant  
12 to Rule 23(a), Federal Rules of Criminal  
13 Procedure signed and executed by Mr. Wagner.)

14 THE COURT:

We will fill the name in. I will order  
15 that the trial proceed to the Court without  
16 a jury.

17 MR. ABRAMOWITZ:

Your Honor, the defendant at this time  
18 is willing to stipulate that the suppression  
19 hearing which was held in this court should  
20 constitute the record of the trial and in  
21 addition to that Mr. Wagner has prepared a  
22 stipulation which we will read into the  
23 record and I will also have one comment to  
24 make about the stipulation once it is read.

25 THE COURT:

Have you had a chance to examine the  
26 stipulation and discuss it with your client,  
27



1  
2 Mr. Abramowitz?

3 MR. ABRAMOWITZ: For the record, your Honor, let me take  
4 a minute to do that.

5 (Conference between Mr. Abramowitz and  
6 the defendant.)

7 MR. ABRAMOWITZ: Yes, your Honor, I have discussed this  
8 with my client and he understands it and  
9 consents to it.

10 THE COURT: I would think it best you read it for  
11 the record.

12 MR. ABRAMOWITZ: "United States of America vs. Michael  
13 Lee Jackson.

14 "It is hereby stipulated and agreed by  
15 and between the Defendant herein, Michael  
16 Lee Jackson, with his attorney Philip B.  
17 Abramowitz, and the United States Attorney  
18 for the Western District of New York, John  
19 T. Elfvin, by Edward J. Wagner, Assistant  
20 United States Attorney, that:

21 "One 1968 Plymouth Fury III bearing  
22 1973 Ohio license plate number A181J,  
23 Vehicle Identification No. PM 23F8F299488,  
24 owned by Charles R. Larkin, 1101 Independence  
25 Avenue, Akron, Ohio, was stolen at Akron  
26 on or about June 12th or 13th, 1973, while  
27

1  
2 parked in a parking garage at 500 South  
3 Main Street, Akron, Ohio, during the period  
4 between 9:00 P.M. June 12th and 10:00 A.M.  
5 June 13th, 1973, and transported in inter-  
6 state commerce to Batavia, New York, where  
7 said vehicle was recovered by officers of  
8 the Batavia, New York Police Department on  
9 or about June 14, 1973, in the possession  
10 of the Defendant, Michael Lee Jackson."

11 THE COURT: That is correct?

12 MR. WAGNER: That is right.

13 MR. ABRAMOWITZ: I think it best this be signed in open  
14 court.

15 THE COURT: Do you have the original there?

16 MR. WAGNER: I do.

17 THE COURT: It should now be executed and signed by  
18 the defendant and the attorneys.

19 (Stipulation signed and executed by  
20 the Defendant, Mr. Abramowitz and Mr.  
21 Wagner.)

22 THE COURT: The stipulation will be made part of the  
23 record in this case. Why not mark this,  
24 Mr. White, as Government Exhibit 1. Do  
25 you have any other exhibits?

26 MR. WAGNER: Yes, your Honor, we have exhibits that  
27



1  
2 were exhibits at the suppression hearing.  
3 THE COURT: Maybe we can use those numbers.  
4 MR. WAGNER: These are Government Exhibits 1 and 2,  
5 THE COURT: Do you have any other exhibits?  
6 MR. WAGNER: No, your Honor.  
7 THE COURT: Make it Exhibit Number 3.  
8 MR. ABRAMOWITZ: I would request all exhibits be made  
9 part of the record and it is my understand-  
10 ing these are all the exhibits the Government  
11 would introduce at trial, Government Exhibits  
12 1 and 2.  
13 MR. WAGNER: That is right.  
14 THE COURT: What is Government's Exhibit Number 1?  
15 MR. WAGNER: Interrogation and advice of rights and  
16 waiver of rights form signed by the defendant  
17 Michael Lee Jackson, and witnessed by Agent  
18 Baird of the FBI.  
19 THE COURT: That was admitted into evidence on the  
20 hearing?  
21 MR. WAGNER: That is right.  
22 THE COURT: That will be admitted in evidence. Mr.  
23 Abramowitz, as I understand, you have no  
24 objection to the admission in evidence of  
25 Exhibits 1, 2 and 3.  
26 MR. ABRAMOWITZ: No, I have no objection, your Honor.  
27

1  
2 THE COURT:

They will be marked in evidence as part  
3 of the trial record then, and will you  
4 describe for the record Exhibit Number 2?

5 MR. WAGNER:

Exhibit Number 2 is a statement prepared  
6 by Agent Baird of the FBI and signed by Mr.  
7 Michael Lee Jackson, the defendant, and it  
8 is two pages.

9 (Government Exhibits Numbered 1, 2 and  
10 3, respectively, received in evidence.)

11 THE COURT:

Would you hand them up, please. Very  
12 well. Is there any other evidence on behalf  
13 of the Government?

14 MR. WAGNER:

No, there is not.

15 THE COURT:

You rest?

16 MR. WAGNER:

That is correct.

17 THE COURT:

Mr. Abramowitz, first of all, any motions?

18 MR. ABRAMOWITZ:

19 Yes, your Honor. I move, - again I  
20 renew my motion to suppress and I ask for  
21 a verdict of acquittal in the case on the  
22 grounds that the Government has failed to  
23 prove its case beyond a reasonable doubt and  
24 on the grounds it has not established a  
25 prima facie case, and for all reasons which  
26 were stated in the brief which I submitted  
27 to this Court at the suppression hearing.



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Essentially, your Honor, the argument rests upon the stipulation and that the only person in this case which could tie Michael Lee Jackson to the crime of interstate transportation of the automobile, - transportation of the automobile in interstate commerce was his statements and it is my contention, your Honor, those statements should be suppressed.

11 THE COURT:

I deny your motion, Mr. Abramowitz. Do you have any evidence?

12  
13 MR. ABRAMOWITZ:

No, your Honor. The Defendant rests.

14 THE COURT:

Now that the evidence is closed by both sides, any further motions, Mr. Abramowitz?

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16 MR. ABRAMOWITZ:

Yes, your Honor. I renew the motion which I made, your Honor, before this Court for this Court to enter judgment of acquittal on the ground that the Government has failed to prove its case beyond a reasonable doubt and the motion that the Government has failed to establish a prima facie case.

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23 THE COURT:

Do you desire a summation on behalf of your client?

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25 MR. ABRAMOWITZ:

No, your Honor, I waive summation.

26 THE COURT:

Anything else, Mr. Wagner?

27

1  
2 MR. WAGNER:

No, your Honor.

3 THE COURT:

4 The case is now submitted to the Court  
5 for decision. The Court finds beyond a  
6 reasonable doubt that the, - do you have the  
7 original file? The Court finds that the  
8 vehicle described in the indictment in this  
9 case, - that is a 1968 Plymouth with the  
10 vehicle identification number set forth in  
11 the indictment and described by the stipula-  
12 tion of the parties was stolen on or about  
13 June 12, 1973. It was taken without the  
14 consent of the owner and it was recovered  
15 approximately two days later in Batavia,  
16 New York, on June 14, 1973.

17 It was stolen as described in the stipu-  
18 lation from Akron, Ohio. The Court has heard  
19 the testimony of the hearing and filed a  
20 decision on the motion to suppress. I  
21 adhere to the ruling made at that time in the  
22 decision and order filed and made a part  
23 of the record on September 13, 1973.

24 Shortly after the Batavia police officers  
25 came upon the defendant behind the Mancuso  
26 Building in Batavia the events described in  
27 my decision occurred. That he indicated to



1 the officer that his name was Leon Smith;  
2 that he was waiting for his friend Al Smith  
3 who had gone into the Mancuso Building for  
4 a few minutes.  
5

6 At that time he was in the alley with the  
7 1968 Plymouth with the motor running. In  
8 some fashion the motor was turned off and  
9 when the defendant was asked for the keys  
10 he said that Al Smith had them. After a  
11 short time when the officer returned, - by  
12 this time they had found that the automobile  
13 had been reported stolen and the three  
14 patrolmen there on the scene, and at that  
15 time Officer Richardson asked the defendant  
16 "is that your car". The defendant answered  
17 "no". He was asked whose car it was and  
18 the defendant replied "I don't know. I  
19 stole it".

20 It appears, and I adhere to my decision  
21 that this statement was, - beyond a reasonable  
22 doubt the statement was voluntarily made  
23 to the officers and there was no need at  
24 that time to advise the defendant before  
25 this conversation of any Miranda rights.

26 That in my decision I related the events  
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1 which occurred at the Batavia Police Head-  
2 quarters where the defendant was taken  
3 shortly after his arrest at the scene behind  
4 the Mancuso Building.  
5

6 In my present decision on the trial of  
7 this case I will not consider any statement  
8 made by the defendant, whatever it might  
9 have been, to the Batavia police officers  
10 at the headquarters. I will, however,  
11 consider the statement which is admitted  
12 in evidence which the defendant made to  
13 Agent James L. Baird of the Federal Bureau  
14 of Investigation at about noon to 2:00 p.m.  
15 on the following day, June 15th. In that  
16 statement Mr. Baird warned him properly of  
17 his rights. He voluntarily, - I find beyond  
18 a reasonable doubt that it was voluntarily  
19 made, told the FBI agents, "On, I think, a  
20 Monday about one week ago or one and half  
21 weeks ago I stole a 1968 Plymouth, two door,  
22 color blue/green from a parking ramp in  
23 Akron, Ohio. This ramp was near a large  
24 factory. I then drove the car to Batavia,  
25 New York, making a stop at Buffalo, New  
26 York, where I stole some clothes, one pair  
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1  
2 of pants and one pair of shoes. I was  
3 arrested last night as I was going back to  
4 above car. I have been in Batavia about  
5 four days. I have had this statement read  
6 to me and now sign it because it is true and  
7 correct", and then he signed "Michael Lee  
8 Jackson", and then further stated:

9 "I would like to add that over the past  
10 several years I have stolen about 8,000 cars.  
11 I have a description of each car, where I  
12 stole them and where I took them all  
13 recorded in a book which is in Detroit.  
14 I do not want to say where this book is.  
15 I was born on January 9, 1952 at Detroit,  
16 Michigan and am a white male. I completed  
17 the sixth grade".

18 The Court finds beyond a reasonable doubt  
19 that the vehicle was stolen at the time and  
20 place described in the stipulation; that  
21 the defendant caused the vehicle to be  
22 transported from Akron, Ohio to Batavia,  
23 New York knowing at the time that it was  
24 a stolen vehicle and it was in his possession  
25 when he was arrested on or about June 14,  
26 1973.  
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Considering all the testimony in this case the Court finds beyond a reasonable doubt that the defendant is guilty of the charge set forth in the indictment.

Are there any motions, Mr. Abramowitz, to be made addressed to the finding of the Court?

MR. ABRAMOWITZ: I renew all prior motions, your Honor.

THE COURT: All right. I will set the sentence date as soon as I have had an opportunity to confer with the probation officers and will do it as soon as possible.

MR. ABRAMOWITZ: Thank you, your Honor.

THE COURT: But because of the fact that the defendant is not from this area it may take a few weeks. We will set sentence for October 4, 1973 and if it can be done at that time it will be done. If not, we will do it as soon thereafter as possible.

MR. ABRAMOWITZ: So the record is clear, your Honor, should this case be remanded to this Court for any reason, we would at that time demand a jury trial and by waiving at this time that right - - -

THE COURT: That is right. Here are the exhibits.



1  
2 Nothing further, we will be in recess.

3 MR. ABRAMOWITZ:

Nothing further. Thank you, your Honor.

4 MR. WAGNER:

Thank you, your Honor.

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6 \* \* \* \* \*

7  
8 I hereby certify that the foregoing is a  
9 correct and accurate transcription of my  
10 shorthand notes.

11 *E. M. Sweeney*  
12 Official Reporter, USDC, WDNV.  
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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**UNITED STATES OF AMERICA,**

**Plaintiff**

**-vs-**

**CR. 1973-251**

**MICHAEL LEE JACKSON,**

**Defendant**

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**APPEARANCES:** John T. Elfvin, United States Attorney  
(Edward J. Wagner, of Counsel)  
Buffalo, New York, for the Government.

Boreanax, O'Shea & Netoyer (Philip B.  
Abramowitz, of Counsel), Buffalo, New  
York, for the Defendant.

The defendant, Michael Lee Jackson, was arrested on June 14, 1973 by officers of the Batavia Police Department. He has been indicted by the federal grand jury for a violation of Title 18, United States Code, Section 2312, charged with transporting a stolen 1968 Plymouth Fury from Akron, Ohio to Batavia, New York. On defendant's motion, a hearing was held to determine whether or not admissions made to the Batavia Police Department and a more detailed statement made to an F.B.I. agent on the day after arrest should be admitted in evidence at



the trial. The court has considered the testimony taken at the hearing and the briefs filed by the parties.

Late in the evening of June 14, 1973, Patrolman Roth of the Batavia Police Department answered an alarm indicating a possible break-in at the Selective Service Headquarters in the Mancuso Building in Batavia. On his way, he observed a 1968 Plymouth parked in an alley behind the building with the motor running. When he asked the person in the vehicle, who is the defendant in this case, to identify himself, the defendant said his name was "Leon Smith," but that he had no license and that he was waiting for his friend "Al Smith" who had gone into the Mancuso Building for a few minutes. Roth asked the defendant to step out of the car. He did so and shut off the engine at the same time. When asked for the keys, the defendant said Al Smith had them. Roth noticed a screwdriver in the car, which he assumed the defendant had used to turn off the ignition. At this time, Roth left to determine whether Al Smith might be the person responsible for the alarm in the Selective Service Headquarters. Upon arriving at the building a short distance

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away, he was assured by Officer Richardson that the building was secure. Roth related his prior observations to Richardson and they both returned to the alley, but the defendant was not in the vicinity at that time. The officers called their headquarters requesting a check on the status of the car. Roth began to patrol the area, but returned within a few minutes when he was notified that the car had been stolen in Akron, Ohio. Upon his return, the defendant was about twelve feet from the car. Before approaching him, Roth called for assistance and then engaged the defendant in a brief general conversation. Within minutes Officer Richardson returned with another patrolman. Richardson asked the defendant: "Is that your car?" When the defendant answered "no," he was asked whose car it was. The defendant replied: "I don't know, I stole it." The defendant was arrested and taken to Batavia Police Headquarters where Officer Taylor orally advised him of his Miranda rights. He admitted that he had stolen the car in Akron, Ohio and gave the officers information about his personal history. No written or other record was made of this conversation.



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On June 15, the following day, after Agent James L. Baird of the F.B.I. was notified that the defendant was in the custody of the Batavia Police Department, he interviewed him from about 12:45 P.M. until 2:00 P.M. at the Genesee County Sheriff's office in Batavia. Before the interview, Baird was informed by someone at the Batavia Police Headquarters that Jackson was charged with a state crime and that he was confined in the Genesee County Jail. That information was not entirely correct since the defendant was not formally charged with a violation of any state law or arraigned until June 19, when he was arraigned at the Batavia City Court on a state charge of criminal possession of stolen property. The defendant was held from the early morning of the 15th until June 19 by the Batavia police without any charge being placed against him. The witnesses at the hearing were unable to explain satisfactorily how this occurred, but it is clear that the F.B.I. did not have knowledge of this improper procedure and the statement given to Agent Baird by the defendant on the afternoon of June 15 was not the product of any unlawful incarceration.

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Baird carefully informed the defendant of his rights. Following this, the defendant executed a waiver of rights form and also a brief statement prepared by the agent.

When the officers had the conversation with the defendant at the scene, they had good reason to believe that the car was stolen. However, since they had also been informed by the defendant that there was another man in the vicinity who had the keys to the car, the alleged "friend" was as much a suspect as the defendant himself. Furthermore, the defendant was not in custody. The questioning was brief. The atmosphere was noncoercive in that there was no restraint, handcuffing or frisking. The statement made to the officers at that time was voluntary and will be admitted at trial. See United States v. Hall, 459 F.2d 454 (2d Cir. 1972), and Miranda v. Arizona, 384 U.S. 436 (1968). The warnings given to the defendant at headquarters shortly after his arrest were conveyed to him in a proper fashion. The statements made to the officers at that time will be admitted into evidence. There is no question that it



-6-

would have been better practice for the officers to make a written or recorded record of the conversation with the defendant at that time. Nevertheless, the court is satisfied that, under all the circumstances, the warnings given were proper and the statements made by the defendant were voluntarily given.

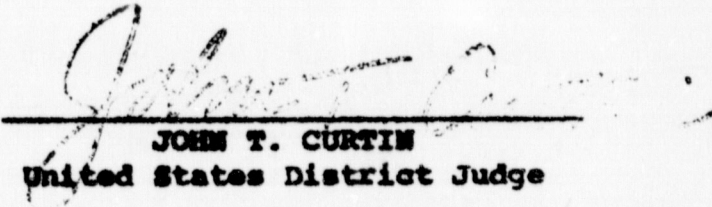
Although about twelve hours intervened between the arrest of the defendant and his interview by Agent Baird and the defendant had not been arraigned before his interview by the agent, nevertheless, the court finds that the statement given to Agent Baird should be admitted into evidence. He carefully advised the defendant of his rights and the statement was freely and quickly given to him by the defendant without any complaint. Although the conduct of the Batavia police in failing to arraign the defendant for five days after his arrest is inexcusable, nevertheless, the statement given to Agent Baird was not the product of any unlawful or improper conduct. At the time of his interview by Baird, the defendant understood his rights and voluntarily made a statement. It should

-7-

be admitted into evidence. See Westover v. United States,

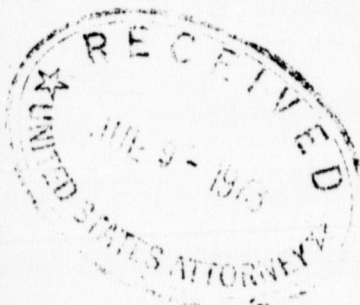
384 U.S. 436 (1966).

So ordered.

  
\_\_\_\_\_  
JOHN T. CURTIN  
United States District Judge

DATED: September 13, 1973





**BATAVIA POLICE DEPARTMENT**  
**SPECIAL REPORT**

Batavia, N.Y. June 14th. 19 73

**Subject: RECOVERY OF STOLEN VEHICLE.**

**to: S.N.SMITH Chief of Police.**

At about 2320 hrs this date writer went to assist Ptlm. R.L.RICHARDSON who was checking the Selective Service Office on Main St., per orders of the station.

While traveling through the alley behind 216 Main St., writer did see a suspicious vehicle License Plate # A181J Ohio, with a white male subject in the said vehicle.

At this time writer asked the subject in the vehicle for his drivers license and he stated that he was not driving the car, but he was waiting for a friend who is the driver of the car. Subject stated that his name was LEON SMITH. Writer then went to see if Officer RICHARDSON needed any help.

Officer RICHARDSON stated that the building was alright, and at this time writer told Officer RICHARDSON about the suspicious vehicle. Your Officers then went to the rear of 216 Main St., and found that the subject had left the area, but the vehicle was still parked. Your Officers ran a 10-29 and found out that it was stolen from Akron Ohio. Your Officers then checked around the area for the above subject and writer found the subject was walking to the vehicle from Liberty St.

Writer at this time asked the subject for some identification, and called for assistance. At this time Ptlm R.L.RICHARDSON & J.A.TAYLOR arrived, and when the subject was confronted with the fact that the car was stolen he readily admitted that he had stolen the car from Akron Ohio about 2 Weeks ago. He stated he took off from Detroit, Michigan about 4 weeks ago. and fears he is wanted for Violation of probation.

The subject was MICHAEL LEE JACKSON of 663 Moyes St., Detroit Michigan D.O.B. 1-09-52. MICHAEL JACKSON stated he served time from 1971 to 1972 in Jackson State Penitentiary for stealing a car. He also served time in the House of Correction in Plymouth Michigan for receiving and stealing stolen property in value of over \$100.00. He has a case pending Oct. 18th 1973 for entering without the owners permission in Detroit, Michigan.

MICHAEL LEE JACKSON was placed under arrest for Grand Larceny 2nd and was brought to this station where he was photo and printed by Det. R.L.DEFREZE.

A record check was sent by Sgt. J.W.BURDETT on the teletype and at the time of this report no replies.

Name

Rank

RECOVERY OF STOLEN VEHICLE

126  
JUNE 25th. 1973

C-1895  
F-38

Subject was incarcerated in the Genesee County Jail for his court appearance in Batavia City Court on June 15th., at 1000Hrs.

MICHAEL JACKSON was given his rights by Officer J.A.TAYLOR, and the car a 1968 Plymouth 2 dr License Plate # A181J was brought to this station by Officer RICHARDSON, and was parked in the North West corner of the parking lot, but was left unlocked as there was no key to the car.

Respectfully Submitted

*H.M. Roth*

R.L.RICHARDSON, J.A.TAYLOR, & H.M.ROTH PTLM

June 25, 1973

Vehicle described in item # 10 released to Hawley Motors Inc., 306 West Main Street; phone-343-1780.

*x Robert Dorman*



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Buffalo, N.Y.  
CR. 1973-251

CURTIN, J.

February 21, 1974

MICHAEL LEE JACKSON

APPEARANCES:

JOHN T. ELFVIN, United States Attorney, by  
EDWARD WAGNER, Assistant United States  
Attorney.

PHILIP ABRAMOWITZ, Esq., Attorney for the  
Defendant.

THE COURT:

Criminal Number 1973-251. Mr. Abramowitz,  
are you ready for sentence at this time?

MR. ABRAMOWITZ:

Yes, I am, your Honor.

THE COURT:

Mr. Jackson, you have had an opportunity,  
or I should say Mr. Abramowitz, you have had  
an opportunity to look at the pre-sentence  
report prepared by the local office of the  
Probation Service and also the Bureau of  
Prisons', their report, and also the letter  
of Mr. Carlson dated February 4, 1974.

MR. ABRAMOWITZ:

Yes, your Honor.

THE COURT:

Before sentence is pronounced what do  
you want to say in behalf of your client?

MR. ABRAMOWITZ:

Your Honor, I would like to reiterate  
and incorporate at this time the remarks I  
made in court at the time you ordered Mr.  
Jackson to his psychiatric study. Your  
Honor, I have had the opportunity to read  
all the reports; that I essentially agree

1 or they agree with my analysis of Mr.  
2 Jackson, that it would be an excellent idea  
3 for your Honor to send Mr. Jackson somewhere  
4 where he could learn to acquire some honorable  
5 skills. I also point out it is my under-  
6 standing Mr. Jackson has never been convicted  
7 of a crime of violence. He has never  
8 threatened any other person and I also ask  
9 your Honor sentence him pursuant to the  
10 provisions of the Federal Youth Correction Act.  
11

12 THE COURT:

Mr. Jackson, is there anything you want  
13 to say about this sentence?

14 THE DEFENDANT:

No, sir.

15 THE COURT:

This is the time if you have anything you  
16 want to call to my attention. It has been  
17 some months since we were together last and  
18 you have had some experience in the Federal  
19 system here. If there is anything you want  
20 to say to me now is the time to say it.

21 THE DEFENDANT:

No, sir. I have nothing to say.

22 THE COURT:

As you have indicated, Mr. Abramowitz,  
23 this is a most troublesom situation, that  
24 if there is some way in which Mr. Jackson,  
25 and I agree with your remark that there is  
26 no evidence here of any kind of violent act  
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at any time on the part of Mr. Jackson but there is this continual course of conduct which leads him into other kinds of criminal activities.

The recommendation of the Bureau of Prisons is that he be committed for a period of five years under Section 4208(a)(2). That would mean that there would be consideration for parole in under two years' time, roughly a year, eighteen months or a little more or they could consider it earlier than that. I don't know what they would do under the circumstances.

I am going to follow their recommendation to a point. I am going to sentence Mr. Jackson for a period of four years to the custody of the Attorney General pursuant to Section 4208(a)(2).

Mr. Jackson, you were convicted after a trial here. You have the right to appeal and if you do not have the funds to pursue an appeal the Court upon application will direct that a notice of appeal be filed. If you desire an attorney to press the appeal for you, upon application the appellate court

will assign a lawyer to represent you. If Mr. Abramowitz is willing to continue they no doubt most probably would assign him to carry on your appeal.

Mr. Abramowitz, Mr. White has some forms for you to fill out. At least at this time the initial decision about whether an appeal should be filed or not is up to you.

MR. ABRAMOWITZ:

Yes, your Honor.

THE COURT:

Should we file a notice of appeal?

MR. ABRAMOWITZ:

Yes, your Honor.

THE COURT:

Do you want to stay the filing for a few days? You can do it up to ten days.

MR. ABRAMOWITZ:

No. I don't think that will be necessary, your Honor.

THE COURT:

All right. You are remanded to the custody of the Marshal, Mr. Jackson.

MR. ABRAMOWITZ:

Thank you, your Honor.

MR. WAGNER:

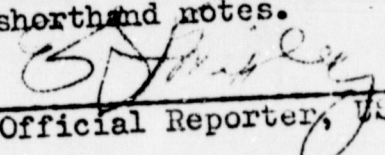
Thank you, your Honor.

THE COURT:

Nothing further. Thank you.

\* \* \* \* \*

I hereby certify that the foregoing is a correct and accurate transcription of my shorthand notes.

  
\_\_\_\_\_  
Official Reporter, USDC, W.D.N.Y.



## INTERROGATION; ADVICE OF RIGHTS

YOUR RIGHTS

Place BATAVIA, New York  
Date 6/15/73  
Time 12:42 PM

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Michael J. Jackson

Witness: James J. Smith, Special Agent, FBI, Buffalo, NY 6/15/73

Witness: William H. Davis, Special Agent, FBI, Buffalo, NY 6/15/73

Time: 12:45 PM

JUNE 15, 1973

MT I MICHAEL LEE JACKSON  
FURNISH THE FOLLOWING VOLUNTARY STATEMENT  
TO JAMES L. BAIRD AND ALLAN M. DAVISON  
WHO HAVE IDENTIFIED THEMSELVES TO ME  
AS SPECIAL AGENTS OF THE FEDERAL BUREAU  
OF INVESTIGATION. I HAVE BEEN ADVISED  
OF MY RIGHTS REGARDING INTERVIEW. I  
DO NOT WANT A LAWYER AT THIS TIME.  
I UNDERSTAND MY RIGHTS AND KNOW  
WHAT I AM DOING. NO PROMISES OR  
THREATS HAVE <sup>BEEN</sup> MADE TO ME.

ON I THINK A MONDAY ABOUT ONE  
WEEK AGO OR ONE AND HALF WEEKS AGO  
I STOLE A 1968 PLYMOUTH, TWO DOOR,  
COLOR BLUE/GREEN FROM A PARKING  
RAMP IN AKRON, OHIO. THIS RAMP WAS NEAR  
A LARGE FACTORY. I THEN DROVE THE  
CAR TO BATAVIA, NEW YORK MAKING A STOP  
AT BUFFALO, N.Y. WHERE I STOLE SOME  
CLOTHES, ONE PAIR OF PANTS AND ONE  
PAIR OF SHOES. I WAS ARRESTED LAST  
NIGHT AS I WAS <sup>GOING</sup> ~~GETTING~~ INTO THE  
ABOVE CAR. I HAVE BEEN IN BATAVIA  
ABOUT FOUR DAYS. I HAVE HAD THIS  
PAGE 1 OF 2 PAGES

MT



STATEMENT READ TO ME AND NOW SIGN  
IT BECAUSE IT IS TRUE AND CORRECT.

X Michael Lee Jackson  
I WOULD LIKE TO ADD THAT OVER THE  
PAST SEVERAL YEARS I HAVE STOLEN  
ABOUT 8000 CARS. I HAVE A descrip-  
TION OF EACH CAR, WHERE I STOLE  
THEM AND WHERE I TOOK THEM ALL  
RECORDED IN A BOOK WHICH IS IN  
DETROIT. I DONOT WANT TO SAY WHERE  
WITNESSES: THIS BOOK IS, I WAS BORN  
ON JANUARY 9, 1952 AT DETROIT, MICHIGAN  
AND AM A WHITE MALE. I COMPLETED  
THE SIXTH GRADE. <sup>MT</sup>

WITNESSES: James J. Baird, Special Agent  
FBI Buffalo, New York 6/15/73  
Celia M. Davis, Special Agent, FBI, Buffalo  
6/15/73

STATE OF NEW YORK : COUNTY OF GENESEE  
CITY COURT : CITY OF BATAVIA

People of the State of New York  
vs.

Michael L. Jackson

Defendant

ACCUSATORY INSTRUMENT  
FELONY COMPLAINT

Ptl. Harry M. Roth, residing at  
Batavia, New York, by this Felony Complaint  
makes written accusation as follows: On information and belief  
That Michael L. Jackson, on the 14th  
day of June, 19 73, in the City of  
Batavia, County of Genesee, New York, did  
commit the offense of Criminal Possession of Stolen Property 2nd Deg.  
(A Class E Felony)

a felony in violation of Section 165.45, sub. 1 of the  
Penal Law of the State of New York, in that ~~(u)he did, at the aforesaid time and place~~

Count One: on June 14, 1973, at about 11:20 P. M. in the vicinity  
of the rear of the building known as 216 East Main Street, Batavia  
New York, the defendant did knowingly possess stolen property, with  
intent to benefit himself or a person other than an owner thereof  
or to impede the recovery by an owner thereof and when the value  
of the property exceeds \$250.00, to wit, the said defendant did  
~~--The facts upon which this Felony Complaint is based are as follows:--~~  
have in his possession a 1968 Plymouth two-door automobile,  
registration Ohio A181J, knowing that said automobile had been  
stolen; said automobile having a value in excess of \$250.00.  
The foregoing allegations are based upon your deponent's investigation  
as a police officer and upon oral admissions made by defendant to  
deponent.

The foregoing factual allegations are based upon personal knowledge of the complainant (and upon information  
and belief, the sources of complainant's information and belief being,



Wherefore, Complainant prays that Michael L. Jackson  
be dealt with pursuant to law.

P. L. H. M. Roth  
Complainant

\*\*Subscribed and Sworn to before me on

June 19, 1973.  
Sealed  
Name  
CITY Judge  
Title or Office

\*set forth statutory language constituting the offense  
\*\*use only one

Verification By Subscription And Notice  
Under Penal Law Section 210.45

It is a crime, punishable as a Class A Misdemeanor under the laws of the State of New York, for a person, in and by a written instrument, to knowingly make a false statement, or to make a statement which such person does not believe to be true.

\*\*Affirmed under penalty of perjury this  
day of \_\_\_\_\_, 19\_\_\_\_

Complainant

STATE OF NEW YORK

County \_\_\_\_\_

Court \_\_\_\_\_

The People of the State of New York  
against

ACCUSATORY INSTRUMENT  
FELONY COMPLAINT

Filed this \_\_\_\_\_ day

of \_\_\_\_\_, 19\_\_\_\_

Justice